

Message

From: Gromer, David [Gromer.David@epa.gov]
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REGION 2 NEWS

Mid Hudson News: Dozens of elected officials statewide oppose new Danskammer power plant

Elected officials from across the state, Thursday, banded together to announce their opposition to the construction of the new Danskammer electric generating plant in the Town of Newburgh.

Mid Hudson News: Poughkeepsie to be a cleaner city with new sweeper

Mayor Rob Rolison and DPW Commissioner Chris Gent unveiled the City of Poughkeepsie's new Global M4 street sweeper on Mansion Street Thursday morning.

Newsday: MTA says bleak financial outlook could delay upgrades for disabled

The fiscal crisis facing the MTA because of the coronavirus pandemic is threatening to set back several planned accessibility upgrades for disabled riders, including improvements on the LIRR, transportation officials and advocates said.

NJ Spotlight: Tool to Curb Pollution in Environmental-Justice Communities Fails to Get Votes

In an unexpected setback, lawmakers yesterday failed to act on a bill touted by Gov. Phil Murphy as key to helping to curb pollution problems in environmental-justice communities.

Virgin Islands Daily News: Isaias spares territory of heavy damage, 'dry-run' for future storms

Bouts of rain and gusty winds from Tropical Storm Isaias largely spared the territory of any real damage or destruction, according to Gov. Albert Bryan Jr., who on Thursday called the storm a "good dry run" for a hurricane season forecast to get worse.

The Buffalo News: Cuomo: Ambitious, \$3 billion environmental bond plan is canceled

With the state facing a \$30 billion, two-year deficit and in the midst of seeking a large financial bailout package from Washington, Gov. Andrew M. Cuomo scrapped one of his signature 2020 initiatives: a \$3 billion bond act he had called "critical" for reducing flood risks, restoring fish and wildlife habitats and buying up new open space.

The Buffalo News: National Fuel pipeline case won't go to Supreme Court

The Allegany County woman turned down by New York State's top court in her effort to prevent National Fuel from taking some of her land for a pipeline will not appeal to the U.S. Supreme Court.

Brooklyn Paper: CON EDISON ASKS SOUTHERN BROOKLYNITES TO REDUCE POWER USAGE TO AVOID OUTAGE

Con Edison is asking Brooklynites from Gowanus to Bensonhurst to limit their power usage while the company completes repairs on July 30.

The Buffalo News: House passes bill including Lake Erie algal bloom study

The House on Wednesday passed a sweeping water resources bill that includes a proposal by Rep. Brian Higgins, a Buffalo Democrat, calling for a demonstration project aimed at finding ways to eliminate harmful algal blooms from Lake Erie.

Mid Hudson News: Advisory commission updated on Stewart Air Guard water contamination

It has been over three years since the carcinogenic chemical PFAS was discovered in the City of Newburgh's drinking supply, Washington Lake. The system was shut down then and the Stewart Airport Air National Guard Base was pinpointed as the source of that contamination.

Mid Hudson News: State Health Department sets drinking water standards

The State Health Department, Thursday, became the first in the nation to set drinking water standards for three emerging synthetic chemicals that have been wreaking havoc with the Newburgh watershed.

Newsday: Red tide algae rolls in early in Peconic Estuary, Shinnecock Bay, Sag Harbor

Arriving a full month early, rust tide algae has spilled across the Peconic Estuary and into the eastern Shinnecock Bay after erupting in Sag Harbor last week — and the unusually hot summer of 2020 is one of the chief reasons, scientists said Thursday.

Newsday: Nassau ramps up shoreline patrols amid continued search for sharks

Hempstead Town Bay constables and lifeguards patrolled Point Lookout beaches and shorelines Thursday on a boat and Jet Ski as they continued searching for sharks.

Newsday: New York State adopts nation's first drinking water standard for 1,4-dioxane

New York has adopted the nation's first drinking water standard for the emerging contaminant 1,4-dioxane, a likely carcinogen found in more than two-thirds of public supply wells on Long Island.

The Weather Channel: Tropical Storm Isaias Triggers Flooding, Knocks Out Power to Tens of Thousands in Puerto Rico

Puerto Rico, much of which still hasn't fully recovered from Hurricane Maria, was dealt another blow Thursday by Tropical Storm Isaias.

Greenwire: Storm Isaias unleashes flooding, landslides in Puerto Rico

Tropical Storm Isaias battered Puerto Rico today as it continued on a forecast track toward the U.S. mainland, unleashing small landslides and causing widespread flooding and power outages on an island still recovering from previous hurricanes and earthquakes.

InsideEPA.Com: Mayors' COVID 'green recovery' strategy targets climate change, equity

A coalition of mayors from major cities including Los Angeles and New York is launching a COVID-19 recovery strategy that combines policies targeting climate change and environmental justice (EJ), eyeing the recovery as a chance to advance key sustainability goals.

The Virgin Islands Consortium: DPNR to Residents: Stay Away From Beaches Throughout Territory Until Further Notice

To that end, DPNR has advised the public to refrain from using the coastal waters throughout the territory until further notification. DPNR is also advising parents to instruct their children to keep away from storm water-impacted beaches as well as areas with manholes and storm water flooding. There may be an elevated health risk to anyone swimming in storm water-impacted areas as a result of increased concentrations of bacteria, oil and chemicals.

EngeryWire: Puerto Rico power company says 'sabotage' may be behind blackout

The head of Puerto Rico's power company said a blackout Tuesday that affected more than 400,000 customers was a "man-made" event that could have been an act of "sabotage."

InsideEPA TSCA: EPA Returns To Chemical Prioritization As New TSCA Evaluations Loom

EPA appears to have quietly begun work developing a third group of existing chemicals it will eventually prioritize for evaluation under TSCA even as it struggles to complete the evaluations for the first round of 10 and finalize scoping documents that will guide its evaluations for the second round of 20.

Newsday: Water providers say millions more will be needed to meet state standards

Long Island water providers on Wednesday said they will have to spend hundreds of millions of dollars over the next few years to meet new state drinking water standards for emerging contaminants — all but assuring ratepayers they will share in the burden.

NATIONAL

Administration

E&E News: Wheeler blasts 'smear campaign' against Trump nominee

Air

E&E News: Duckworth leads effort to expand EPA monitoring

Bloomberg Law: Georgia, Texas Landfills May Lack Air Permits, EPA Watchdog Says

E&E News: Watchdog urges EPA to boost oversight of landfill permits

Inside EPA: EPA, DOJ At Odds Over Whether Biomass Proposal Undercuts ACE Rule

Policy

The Hill: EPA looks to other statutes to expand scope of coming 'secret science' rule

National Law Review: EPA's New Asbestos Determination May Upend Decades of Science and Impact Litigation

Inside EPA: EPA Issues Final 'Part A' Ash Disposal Rule, Drawing Lawsuit Threats

E&E News: EPA unveils 'lead-free' rule targeting plumbing parts

Inside EPA: Biofuels, Oil Industries Grapple With Delays For Major EPA RFS Decisions

Water

Inside EPA: Final EPA Rule On Lead-Free Pipes Drops Proposed Labeling Mandate

Inside EPA: Hearing Tees Up House Democrats' SDWA, PFAS Post-Election Priorities

COVID

Energy News: Wheeler dismisses study claiming EPA role in elevated air pollution, COVID-19 cases

Bloomberg Law: EPA Won't Extend Relaxed Enforcement, Despite Surging Virus Data

Chemicals

National Law Review: Suit Regarding Failure to Disclose Information about New Chemicals Could Be Resolved without a Trial

Bloomberg Law: EPA Sued Over PCB Pollution in Maryland Rivers Near Baltimore

Pollution

Bloomberg Law: Coal-Fired Utilities Given More Time to Manage Leaking Landfills

The Hill: EPA rule extends life of toxic coal ash ponds

E&E News: EPA grants leniency for dumping toxic coal ash

FULL ARTICLES

REGION 2

Mid Hudson News

<https://midhudsonnews.com/2020/07/31/dozens-of-elected-officials-statewide-oppose-new-danskammer-power-plant-2/>

Dozens of elected officials statewide oppose new Danskammer power plant

July 31, 2020

Elected officials from across the state, Thursday, banded together to announce their opposition to the construction of the new Danskammer electric generating plant in the Town of Newburgh.

Over 150 officials signed onto a letter to Governor Cuomo urging him to reject the application for the gas-fired plant on the site of the existing facility.

Food and Water Watch and the New York Public Interest Research Group are among those to organize the opposition letter. Eric Wood is the regional director of NYPIRG.

“We don’t want here in the Hudson Valley, neither do elected officials, and neither do local municipalities,” he said. “So, we need to take this message straight to the governor and let him know he needs to do everything in his power to make sure this project is denied.”

Meanwhile, Michelle Hook, Danskammer Energy’s vice president for public affairs questions “the accuracy and relevance of a list that includes names from as far away as Syracuse, people who are no longer elected officials, and those we know are in favor of the project.”

She said that, “What is unquestionably true is that very few of the officials on this list represent any of the 500,000 New Yorkers that Danskammer serves. This project has the support of dozens of elected officials in the area we would serve and, no doubt, tens of thousands of local residents who rely on us for power when they need it most.”

Hook said, “The science proves our project will lead to cleaner air and less pollution in the Hudson Valley, and in the next 10 to 15 years a new Danskammer would be capable of running on zero-emission hydrogen to further help New York meet its climate targets.”

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Mid Hudson News

<https://midhudsonnews.com/2020/07/31/poughkeepsie-to-be-a-cleaner-city-with-new-sweeper/>

Poughkeepsie to be a cleaner city with new sweeper

July 31, 2020

Mayor Rob Rolison and DPW Commissioner Chris Gent unveiled the City of Poughkeepsie's new [Global M4 street sweeper](#) on Mansion Street Thursday morning.

"A priority of mine since taking office in 2016 was to get another street sweeper," said Rolison after taking the new machine for a test drive on Mansion Street in front of Warring Elementary School.

The \$269,000 purchase was approved by the common council in March of this year. "I want to express my gratitude to the council for allowing us to borrow money for this cutting-edge technology," added Rolison.

The sweeper is the same model that New York City uses to clean the streets. It is capable of picking up five cubic yards of sand, gravel, and other small debris before needing to be emptied.

The current "vacuum" style sweeper used by Poughkeepsie requires the operator to return back to the DPW yard to dump the contents before returning back to cleaning. The new machine is mechanical, operating at 76 decibels, and the body can be raised up allowing it to dump the contents into a truck, rather than traveling back to the yard. "This will save us an incredible amount of man-hours because the operator will no longer have to leave the route and travel across the city to dump before resuming operations," the mayor said.

The manufacturer claims that the machine runs quiet enough that it can be operated at night without disturbing the residents. The diesel-powered machine can sweep at speeds of 5-11 mph, has a very tight turning radius, and is equipped with a rear-view camera for safety.

"This is a much-needed piece of equipment that will help keep the city clean," said 5th ward councilwoman Yvonne Flowers. Due to limited resources, the 5th ward has had minimal street cleaning done in the past. Rolison and Gent both indicated that the machine will be focusing on the north side in an attempt to get the streets caught up.

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Newsday

<https://www.newsday.com/long-island/transportation/accessibility-upgrades-for-disabled-riders-1.47534141>

MTA says bleak financial outlook could delay upgrades for disabled

By Alphonso A. Castillo

July 31, 2020 (updated)

The fiscal crisis facing the MTA because of the coronavirus pandemic is threatening to set back several planned accessibility upgrades for disabled riders, including improvements on the LIRR, transportation officials and advocates said.

With a looming budget deficit that could total \$16.2 billion by 2024, Metropolitan Transportation Authority officials have said all options are on the table to reduce costs. That includes deferment of much of the agency's \$55 billion Capital Program, which was to fund infrastructure in the transit system through 2024.

The MTA, responding to years of pressure from disability rights advocates, included in the program more than \$5 billion in accessibility improvements, such as the installation of elevators and ramps at 70 New York City subway stations and seven Long Island Rail Road stations.

Under a recent settlement to a lawsuit filed by disabled railroad riders, the LIRR agreed to install elevators at three more stations on the Babylon line. Many more subway and railroad stations were in line for elevator replacements.

But the financial crisis brought on by COVID-19 has decimated the agency's key revenue streams of fare and toll dollars, and dedicated tax receipts. MTA officials are holding out hope that the federal government will come through with a financial bailout in this next proposed stimulus package.

"If we don't get the help from Washington, we're not going to be able to accomplish everything that was set out in the Capital Program," MTA chief development officer Janno Lieber said at an event Monday commemorating the 30th anniversary of the passage of the Americans with Disabilities Act. "Accessibility will always remain a priority of the MTA, whatever the size of our Capital Program. But it's clearly going to impact the scope of what we're able to do."

For disability rights advocates, the coronavirus stands as the MTA's latest justification for putting off improvements that should have been made years ago.

"It's always an excuse. Something always happens," said Marilyn Tucci, an outreach coordinator for the Suffolk Independent Living Organization, one of the plaintiffs in the 2018 federal lawsuit calling for the installation of elevators at Amityville, Lindenhurst and Copiague stations.

"I've been hearing this from them for years: 'We're going to make things better. We're going to put in an elevator. We're going to do this. We're going to do that,' " said Tucci, who is blind and occasionally uses the LIRR. "But something always happens where it's not done. And then people with disabilities don't have the access to the things they need."

The lawsuit settlement reached in July calls for some accessibility upgrades, including to curbs and bathrooms, to be made by next year, and for the elevators to be installed by 2023. But the settlement also allows special consideration for pandemic-related funding issues that could impact LIRR officials' "ability to fulfill their obligations under this agreement."

"It is acknowledged in the settlement agreement that defendants may not be able to meet all of the prescribed deadlines due to COVID-19-related funding or other issues," LIRR spokeswoman Meredith Daniels said.

"There is serious financial uncertainty at the MTA requiring a pause on new awards and potential reductions of the scope of our historic 2020-2024 Capital Program. We urge all our partners, advocates and elected officials to join our call for this urgently needed federal funding so we can make good on our promise to deliver LIRR station accessibility upgrades."

David Abrams, one of the plaintiffs' attorneys in the suit, said it is "very disheartening" and "very upsetting" that the MTA could, once again, put much-needed accessibility improvements on the back burner.

“In the grand scheme of the MTA’s capital budget, as we understand it, we’re talking about a small blip in the cost,” said Abrams, a partner in the law firm of Kasowitz Benson Torres, representing plaintiffs. “It’s really critical that the MTA and the LIRR step up here and do what they are required and obligated to do for riders with disabilities, and what they agreed to do. . . . This has taken way too long.”

Another plaintiff in the suit, wheelchair user Gina Barbara of Wantagh, is undeterred by the potential for a pandemic-related delay to the upgrades — confident that the railroad will be obligated to eventually comply with the court-ordered improvements.

“I’m totally OK with the fact of waiting, as long as it’s going to get done,” said Barbara, who believes it shouldn’t have taken a federal lawsuit for the railroad to address its accessibility problems. “They don’t realize what it feels like to be in the position of a person with a disability, and being still treated today, after the ADA, as a second-class citizen, where we have to fight for everything we need.”

LIRR accessibility

- 108 of 124 stations are already ADA accessible.
- Two stations, Murray Hill and Nostrand Avenue, have gotten new elevators over the last year. An elevator installation project at Floral Park is also underway.
- The 2020-24 MTA Capital Program, and a recent federal lawsuit settlement, called for elevator installations at several more stations, including Hollis, Hunterspoint Avenue, Locust Manor, Forest Hills, St. Albans, Mets-Willets Point, Amityville, Lindenhurst and Copiague.

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NJ Spotlight

<https://www.njspotlight.com/2020/07/tool-to-curb-pollution-in-environmental-justice-communities-fails-to-get-votes/>

Tool to Curb Pollution in Environmental-Justice Communities Fails to Get Votes

Gov. Phil Murphy pressed lawmakers to act but they backed off amid growing pushback

By Tom Johnson

In an unexpected setback, lawmakers yesterday failed to act on a bill touted by Gov. Phil Murphy as key to helping to curb pollution problems in environmental-justice communities.

The legislation ([S-232](#)) is viewed by advocates as establishing a national model for giving minority and low-income communities more tools to block new projects that could worsen air and other pollution in their neighborhoods.

But a last-minute lobbying blitz against the bill by business interests and labor groups led the Assembly to hold off voting planned for Thursday. The bill had been expected to pass and then be approved by the Senate and sent on to Murphy for his consideration.

Big thumbs-up from Murphy

Murphy heartily endorsed the bill last month at a news conference, one of the rare occasions when he backed a measure still pending in the Legislature. The governor has made environmental justice a priority during his

term, backing up his pledge by committing more funds to so-called overburdened communities to reduce pollution there.

Kim Gaddy, a Newark native and member of Clean Water Action, said she was disappointed Assembly Speaker Craig Coughlin (D-Middlesex) did not post the bill for a vote, saying advocates were confident they had the 41 votes to send it on to the Senate.

“It would have been a great opportunity to demonstrate Black lives and people of color lives matter,” said Gaddy, noting it would have occurred on the day when civil rights icon John Lewis was buried.

The bill, long sought by environmental justice advocates, would require the state Department of Environmental Protection to consider the cumulative impacts of locating new power plants or major manufacturing facilities where residents already suffer from pollution from incinerators, hazardous-waste sites, or large factories.

Butting heads with business

The bill’s broad sweep, affecting portions of more than 300 communities, raised concerns from business lobbyists and union officials that it could hamstring growth in many of the urban communities desperate to create new job opportunities for their residents.

“We’re glad the bill was held today,” said Ray Cantor, a vice president of the New Jersey Business & Industry Association. “The bill was well-intentioned, but too broad with too much uncertainty.”

Labor officials, who got involved in the issue late, are worried that if projects are delayed, it could drive down employment among their members.

A top concern revolved around facilities with so-called Title V air permits, which expire every five years. Critics say the new provisions create uncertainty whether existing plants will be able to renew their permits, a level of uncertainty that will discourage companies from making new investments in New Jersey.

“We look forward to coming up with a workable environmental-justice program that we can support,” said Dennis Hart, executive director of the Chemistry Council of New Jersey.

While many lawmakers questioned why the bill was moving so quickly, even those who oppose the measure acknowledge the setback may only be temporary — given the strong backing from environmental-justice advocates and the Murphy administration.

The legislation is part of a two-bill package sponsored by Sen. Troy Singleton (D-Burlington). The other bill, also endorsed by the Murphy administration, would create a new Office of Clean Energy Equity. Among other things, it would ensure a greater percentage of funds from the Clean Energy Program are directed to environmental-justice communities.

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Virgin Islands Daily News

http://www.virginislandsdailynews.com/news/isaias-spares-territory-of-heavy-damage-dry-run-for-future-storms/article_480a134a-a665-575e-9427-425ccbb65c6f.html

Isaias spares territory of heavy damage, 'dry-run' for future storms

By AJ Rao

July 31, 2020

Bouts of rain and gusty winds from Tropical Storm Isaias largely spared the territory of any real damage or destruction, according to Gov. Albert Bryan Jr., who on Thursday called the storm a “good dry run” for a hurricane season forecast to get worse.

Addressing the public in a Thursday morning weather update, Bryan said he lifted a territory-wide curfew — originally set to expire at noon — by 6 a.m. after road crews gave him a final go-ahead. Government employees resumed work at 10 a.m., while employees who traveled by ferry to work were excused for the day.

The seaports were closed as of Thursday night, as the U.S. Coast Guard continued to assess conditions.

Both airports in the territory are open.

Despite initial forecasts of 3-6 inches of rainfall, Isaias appeared to bring more wind than moisture, much to the chagrin of residents looking to have their cisterns filled.

“Lot of people are still complaining that they needed some rain in the cisterns,” Bryan said. “We did not see the rainfall we anticipated, although we are thankful that God has granted us his grace and allowed us to pass through this first event for the year.”

The Virgin Islands remains under a Flash Flood Watch through this morning, according to the National Weather Service, with additional rainfall between 1-3 inches and isolated amounts of up to 5 inches possible due to “trailing bands and plumes of moisture.”

Isaias, which only became a tropical storm Thursday night, is expected to push westward and bring tropical storm conditions to the Dominican Republic, Haiti, the Turks and Caicos and the southwest Bahamas today and later the Florida panhandle by Saturday.

Government response

Government agencies said preparations and response efforts for Isaias, the first local storm of the 2020 Atlantic Hurricane Season, went well.

“We did not face any significant issues during this storm,” said DPW spokesperson Renee Exius. “It was uneventful and we are grateful for that. Commissioner [Nelson Petty Jr.] indicated that we conducted our usual preparations and will continue to be vigilant. Staff was on standby and ready to address the roadways as soon as it was safe to do so.”

A news release from the V.I. Water and Power Authority on Thursday stated that the power plants at Estate Richmond and Krum Bay “fared well in the storm event with no interruptions to power production.”

Sporadic feeder outages did lead to several isolated service interruptions in both districts. Crews completed planting new utility poles and transferring lines in the Golden Rock area of St. Croix and work on trouble calls will continued through Thursday night, according to the release.

“These outages are routinely caused by primary service lines slapping against each other, trees intermittently contacting power lines or tree branches and limbs coming to rest on the service lines,” said WAPA Chief Operating Officer of Electric System Clinton Hedrington Jr.

“In either scenario, an electrical fault is detected and the feeder is tripped to protect the grid and prevent surges from back feeding into the power plants.”

WAPA Chief Operating Officer of Water System Noel Hodge reported no potable water service interruptions during the passage of the tropical storm.

“The system in both districts did well, our pump stations remained online and service was not impacted,” Hodge said.

WAPA Executive Director Lawrence Kupfer said the utility will take a second look at storm operations, review any lessons learned and “tweak our emergency operation plans accordingly.”

Isaias, in addition to being the first storm of the local season, was also the first storm to hit Virgin Islanders amid a pandemic.

As such, congregate shelters were not open and sandbags were not distributed in advance of the storm due to concerns over gatherings of individuals and the potential spread of the COVID-19 virus.

Bryan said sandbags are normally not handed out for unnamed storms and begin only with Category 1 hurricanes.

He added that he will be announcing a protocol for sandbag distribution soon.

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The Buffalo News

https://buffalonews.com/news/state-and-regional/govt-and-politics/cuomo-ambitious-3-billion-environmental-bond-plan-is-canceled/article_f2078760-d296-11ea-9007-ffffe893e213d.html

Cuomo: Ambitious, \$3 billion environmental bond plan is canceled

By Tom Precious

July 30, 2020

With the state facing a \$30 billion, two-year deficit and in the midst of seeking a large financial bailout package from Washington, Gov. Andrew M. Cuomo scrapped one of his signature 2020 initiatives: a \$3 billion bond act he had called “critical” for reducing flood risks, restoring fish and wildlife habitats and buying up new open space.

“The financial situation now is unstable. I don’t think it would be financially prudent to do it at this time,” Cuomo told reporters on Thursday.

Voters were to be asked for their approval in a statewide bond referendum in November.

Cuomo signed into law on April 3 – two weeks after he ordered much of the state’s economy to shut down due to the Covid-19 pandemic – what he called the Restore Mother Nature Bond Act. Approved as part of the state budget in April, Cuomo called the bond act a critical necessity for the state’s ability to address climate change. The bill said its purpose was to “preserve, enhance and restore New York’s natural resources and reduce the impact of climate change.”

The budget included an unusual provision, however: Cuomo’s budget director, Robert Mujica, could legally cancel the bond act unless he certified “that such debt can be issued within the state’s multi-year financial plan without adversely affecting” other capital projects already approved or “essential government services.”

Mujica has until Aug. 3 – 90 days before election day – to give that certification, which the Cuomo administration said Thursday will not be coming.

Cuomo on Thursday used the term “postpone” to describe his bond act decision. But the actual law he signed states that the statute authorizing the borrowing "shall expire and be deemed repealed" if the bonding question did not go to voters this fall.

Environmental groups called the decision disappointing, with one organization, The Nature Conservancy, calling it a “missed opportunity.” Environmental Advocates called Cuomo's decision "shortsighted."

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The Buffalo News

https://buffalonews.com/news/local/national-fuel-pipeline-case-wont-go-to-supreme-court/article_5101dc8c-d1db-11ea-a8a2-d7d61ab9f8a7.html

National Fuel pipeline case won't go to Supreme Court

By Thomas J. Prohaska

July 30, 2020 (updated)

The Allegany County woman turned down by New York State's top court in her effort to prevent National Fuel from taking some of her land for a pipeline will not appeal to the U.S. Supreme Court.

Theresa Schueckler lacks the resources to do so, her attorney said.

The attorney, Gary A. Abraham, has not been admitted to practice before the Supreme Court, and he said he was not able to find a firm or organization to file Schueckler's appeal pro bono – for free.

On June 25, the New York Court of Appeals ruled 4-2 in favor of National Fuel's efforts to use eminent domain powers to run its Northern Access natural gas pipeline through Schueckler's property.

Abraham filed a motion asking the state Court of Appeals to reconsider, but such motions seldom succeed.

The pipeline would carry gas from National Fuel fracking sites in northern Pennsylvania across parts of Allegany, Cattaraugus and Erie counties to and connect to a Canadian pipeline beneath the Niagara River. The project also includes additions to National Fuel's pipelines in Niagara County.

The Federal Energy Regulatory Commission granted National Fuel a permit despite attempts by the state Department of Environmental Conservation to block the project by denying the company a water quality permit, which would allow the pipeline to cross streams.

The Court of Appeals ruled that the federal permit trumps restrictions in New York's eminent domain law.

Abraham said he'd like the State Legislature to pick up on a hint in the dissenting opinion that the state law needs to change.

"We will turn to the Legislature to change that section of eminent domain law that says you don't have to demonstrate you have a public project if you have a (federal) certificate," Abraham said.

The Sierra Club opposes the pipeline and is considering lobbying for such an amendment.

"National Fuel's Northern Access Pipeline project is not needed, runs counter to New York State's Climate Leadership and Community Protection Act and has been denied a water quality certification by the DEC," said Diana Strablow, vice chair of the Sierra Club Niagara Group.

"If built, over 70% of the gas would be exported to Canada," Strablow said. "Further, the goal of the (climate law) is to transition New York State off of fossil fuels, making this project not only unnecessary but against the interests of New York State residents. Use of eminent domain should not be allowed for a project that is contrary to public interest for National Fuel's profit."

"While New York State pursues goals to significantly reduce greenhouse gas emissions, natural gas will continue to be a critical component of America's energy supply, economic health and national security," National Fuel spokeswoman Karen Merkel said.

Merkel said the \$500 million project would provide a direct and indirect economic impact of about \$735 million in New York.

"Locally, the project is estimated to increase annual property tax receipts for New York's four counties by approximately \$11.8 million, with an additional one-time sales tax impact of approximately \$6.6 million for those same four counties," Merkel said.

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Brooklyn Paper

<https://www.brooklynpaper.com/con-edison-asks-southern-brooklynites-to-reduce-power-usage/>

CON EDISON ASKS SOUTHERN BROOKLYNITES TO REDUCE POWER USAGE TO AVOID OUTAGE

By Rose Adams

July 30, 2020

Con Edison is asking Brooklynites from Gowanus to Bensonhurst to limit their power usage while the company completes repairs on July 30.

More than 96,000 residents living in Gowanus, Park Slope, Sunset Park, Bay Ridge, Dyker Heights, Borough Park, and Bensonhurst are urged to turn off energy-intensive appliances such as washers, dryers, microwaves and even some air conditioners to prevent a power outage during the repairs, the company said.

"If you have two air conditioners, use only one and set it to the highest comfortable temperature," Con Edison said in a statement.

The affected area is bound by Third Street and Fourth Avenue in Gowanus, the Narrows and Gravesend Bay past Fort Hamilton, Gowanus Bay and the Narrows passed Bay Ridge, and Fort Hamilton Parkway and Fifth Avenue in Kensington, the company said.

As of 12:30 pm on Thursday, only about five customers in Bay Ridge were affected by the outage, local councilman Justin Brannan tweeted.

Workers began repairs on broken feeder cables in the district on Wednesday, and will continue repairs throughout the Thursday, said spokesman Allan Drury, who did not say when Con Edison expects to complete the fixes.

To minimize the chances of a power outage, the company reduced voltage eight percent throughout the area. Staffers will contact affected residents directly as repairs continue and will post updates on ConEd's [Twitter](#) account, according to the company's statement.

The power reduction comes on the heels of a [two-week heatwave](#), with temperatures remaining in the mid-90s. Thursday afternoon will reach a high of 92 degrees with 50 percent humidity before dipping down into the 80s at about 7 pm, according to [weather.com](#).

The affected district also includes some neighborhoods — including Kensington and Flatbush — where ConEd [intentionally cut power](#) last summer in an effort to prevent a damage to the grid.

At the time, the outage infuriated locals, who accused ConEd of stripping energy from communities of color in order to keep white customers cool.

"It is only in communities that look like ours that this is acceptable," state Sen. Zelnor Myrie said. "We want the problem fixed now."

A ConEd spokesman said that the 2019 outages were inevitable.

"The residents where we had to cut service during the heat wave were going to lose power regardless of whether we took action or not," Robert McGee told Brooklyn Paper.

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The Buffalo News

https://buffalonews.com/news/local/house-passes-bill-including-lake-erie-algal-bloom-study/article_ff3262d8-d1d9-11ea-9d30-e7910e36529f.html

House passes bill including Lake Erie algal bloom study

By Jerry Zremski

July 29, 2020 (updated)

The House on Wednesday passed a sweeping water resources bill that includes a proposal by Rep. Brian Higgins, a Buffalo Democrat, calling for a demonstration project aimed at finding ways to eliminate harmful algal blooms from Lake Erie.

The U.S. Army Corps of Engineers would conduct that study.

"Harmful algal blooms pose a threat to our waterways and must be addressed proactively," Higgins said. "The professionals at the Army Corps of Engineers, particularly in the Buffalo District, are skilled stewards of our water."

While algal blooms have been concentrated in the western part of Lake Erie, Higgins noted that they have also occurred elsewhere in Western New York. For example, Buffalo Niagara Waterkeeper's Water Reporter Map has identified algal blooms in parts of the Niagara River.

The Water Resources Development Act, which will now be considered by the Senate, also calls for a Great Lakes Coastal Resiliency Study, in which the Army Corps would study lake levels and make recommendations on flood management. The measure also includes a requirement that the Army Corps do an inventory of waterways that may be contaminated with perfluorinated (PFAS) chemicals.

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Mid Hudson News

<https://midhudsonnews.com/2020/07/30/advisory-commission-updated-on-stewart-air-guard-water-contamination/>

Advisory commission updated on Stewart Air Guard water contamination

July 30, 2020



It has been over three years since the carcinogenic chemical PFAS was discovered in the City of Newburgh's drinking supply, Washington Lake. The system was shut down then and the Stewart Airport Air National Guard Base was pinpointed as the source of that contamination.

A restoration advisory committee, Wednesday night, held its third meeting to update members and the community about the studies being conducted to remediate the problem that has migrated to streams and tributaries of the Hudson River.

Committee Co-Chairman Chuck Thomas is concerned about that spread. "We have effects on Brown's Pond, we have effects on the Beaver Dam Lake tributaries, we have Silver Stream effects, we have wells in the Town of New Windsor and the Town of Newburgh that have been affected by PFOS's and I am really torn with how we are going to move to a bigger picture when it has taken us basically three years now to assess that we have a problem with Rec Pond," he told the committee via a Zoom session.

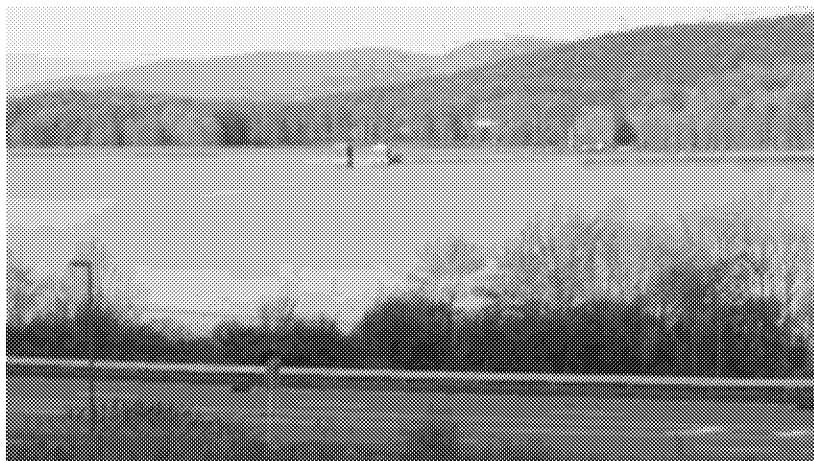
Newburgh City Councilman Anthony Grice said the entire watershed in the area must be protected.

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Mid Hudson News

State Health Department sets drinking water standards

July 30, 2020



ALBANY – The State Health Department, Thursday, became the first in the national to set drinking water standards for three emerging synthetic chemicals that have been wreaking havoc with the Newburgh watershed.

There can no longer be more than 10 parts per billion of PFOA and PFOS in drinking water and no more than one part per billion of 1,4 dioxane.

Rob Hayes, clean water advocate for Environmental Advocates New York said it took a lot of pressure to get the state to move off the dime on this issue.

“It is really the result of tireless advocacy from impacted communities like Hoosick Falls and Newburgh, that have demanding these drinking water standards for years,” he said. “Now we know that many water systems have never tested for these chemicals before. It likely that they are very prevalent in drinking water.”

In both Newburgh and Hoosick Falls, those chemicals have been found to have contaminated the drinking water supplies.

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Newsday

<https://www.newsday.com/long-island/environment/red-tide-algae-peconic-shinnecock-bay-1.47530262>

Red tide algae rolls in early in Peconic Estuary, Shinnecock Bay, Sag Harbor

By Joan Gralla

July 30, 2020



Arriving a full month early, rust tide algae has spilled across the Peconic Estuary and into the eastern Shinnecock Bay after erupting in Sag Harbor last week — and the unusually hot summer of 2020 is one of the chief reasons, scientists said Thursday.

Another culprit for the algae's earliest confirmed appearance, said Christopher Gobler, a professor at Stony Brook University's School of Marine and Atmospheric Sciences, is all the nitrogen that spews from Suffolk County. Unlike New York City and Nassau County, where most homes and firms are connected to sewer systems, around 75% of Suffolk's homes instead rely on cesspools and traditional septic systems that eventually allow the pollutant to flow into the surrounding waters.

While the rust tide algae does not harm humans, it can kill countless fish and shellfish — and already has hit lethal concentrations.

"Cell densities exceeding 4,500 cells per milliliter were measured in Sag Harbor this week, with densities of ... [more than] 1,000 cells per milliliter found in Noyak Bay, Little Peconic Bay, Great Peconic Bay, Flanders Bay, and eastern Shinnecock Bay," Gobler said in a statement.

"Densities of the rust tide algae, known as *Cochlodinium*, above 300 cells per milliliter can be lethal to marine life," he added.

Gobler recalled that "Recent rust tides on Long Island have resulted in massive kills of fish and shellfish on eastern Long Island."

June was hot enough: about 2.2 degrees above normal, estimated Tim Morrin, a National Weather Service meteorologist based in Islip. The mean temperature is 68.4 in Islip, NWS records show.

July was even warmer: a full four degrees above average, Morrin said, as of Wednesday. The mean for July in Islip is 73.9.

"We have identified climate change and specifically warm summer temperatures as a trigger for these large, widespread rust tides," Gobler said. "Compared to the twentieth century, summer water temperatures today are significantly warmer and it's been a warmer than usual summer. When we have extended heat as we have seen this month, intense rust tides often follow."

And the ocean, according to the National Aeronautics and Space Administration, "does an excellent job of absorbing excess heat from the atmosphere."

Especially on the surface, as anyone who dives in knows.

"The top few meters of the ocean store as much heat as Earth's entire atmosphere," NASA says on its website. "So as the planet warms, it's the ocean that gets most of the extra energy."

Last year, Gobler said he and colleagues, "demonstrated that ocean warming since 1982 in the northeast U.S. has expanded the 'bloom season' for rust tide by more than a month and has increased the rapid growth of the algae."

Possibly, scientists say, the high number of storms expected in the Atlantic during the June 1 to Nov. 30 hurricane season may help curb the blooms if they wash it up on the shore where it would die as it dries out.

However, "If sustained through fall [there is a] greater likelihood of harm (to) marine life," Gobler, who was not immediately available for an interview, said by text.

Of course, a number of Eastern Seaboard states, especially Florida, also are afflicted with harmful algae blooms, and Gov. Andrew M. Cuomo said two New York universities, SUNY College of Environmental Science and Forestry and Clarkson University, will soon begin experiments to see if the methods they developed since he asked them last year to solve the problem prove successful.

The research will be conducted in an upstate lake so toxic that monitors have long discouraged swimming: the 715-acre Lake Neatahwanta. The lake's Iroquois' name is translated as "little lake near the big lake," and it is near the city of Fulton in Oswego County.

Specifically, SUNY-ESF will test hydrodynamic cavitation with hydrogen peroxide while Clarkson will experiment with electrochemical oxygenation filtration, Cuomo said.

The aim is to develop ways of battling these blooms that can be used around New York state — and the world, he said.

"Protecting our state's precious water is a top priority, and this summer Lake Neatahwanta will serve as the testing ground for the inventions that have the potential to be put to use across the state to reduce the threat of these harmful algal blooms."

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Newsday

<https://www.newsday.com/long-island/nassau/sharks-beaches-long-lido-nickerson-lookout-1.47523648>

Nassau ramps up shoreline patrols amid continued search for sharks

By John Asbury

July 30, 2020

Hempstead Town Bay constables and lifeguards patrolled Point Lookout beaches and shorelines Thursday on a boat and Jet Ski as they continued searching for sharks.

Supervisor Don Clavin said the patrols will continue through the summer after eight sharks, including three confirmed bull sharks, were spotted off the South Shore.

“Considering these predators are coming close to the shoreline, we’ll have lifeguards patrolling for everyone’s safety,” Clavin said

There were no additional sightings Thursday, but lifeguards were searching for larger fish and bait fish that may attract sharks to the region.

“We’ve had three bull shark sightings, and yesterday a shark 6-feet long off Nickerson Beach,” Clavin said. “Then yesterday we had a 10-foot shark spotted by three lifeguards and half a dozen swimmers. People have a natural fear and the bull sharks are a real danger when they come to the shore. They’re real nasty critters.”

Officials said the sharks are attracted by warm water and bait fish. A man caught a bull shark this past weekend off Long Beach that was estimated to be about 300 pounds.

Since Monday, lifeguards have reported eight shark sightings off East Atlantic Beach, Point Lookout and Long Beach amid a week of hot and humid weather. A shark was also spotted off Jones Beach, but officials could not confirm that it was separate from a pod of dolphins.

Marine expert Paul Sieswerda, who is also director of the group Gotham Whale, said biologists have been getting more than double the reports of different sharks off the coast of Long Island and New York Harbor, including hammerheads, thrasher and sand tiger sharks. He said the reported sightings of bull sharks would be extremely rare for this region since they normally prefer tropical water.

Ocean swimming was limited to knee-deep waters in Hempstead Town beaches in Point Lookout and Lido Beach.

Nickerson Beach was open, but the county was not allowing swimming.

Beaches and swimming were fully open in Long Beach.

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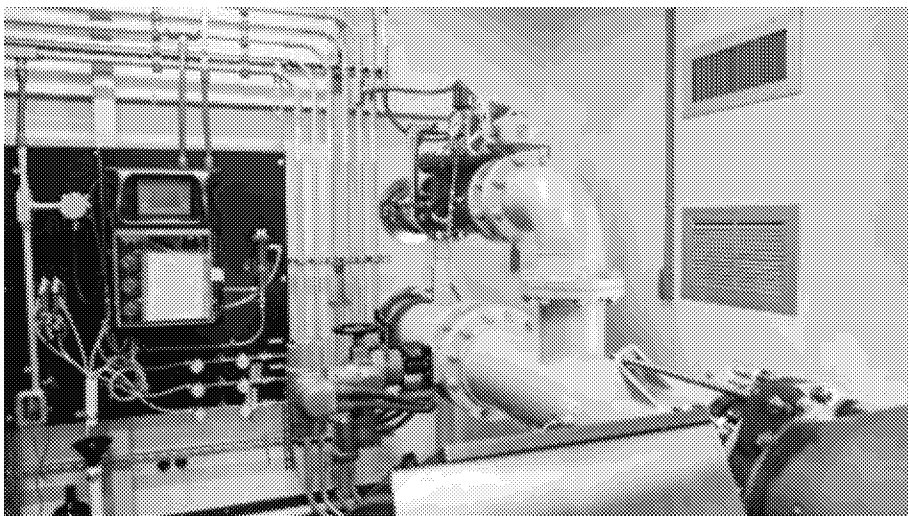
Newsday

<https://www.newsday.com/long-island/environment/state-environmental-standards-approved-1.47526359>

New York State adopts nation's first drinking water standard for 1,4-dioxane

By Paul LaRocco

July 30, 2020



New York has adopted the nation's first drinking water standard for the emerging contaminant 1,4-dioxane, a likely carcinogen found in more than two-thirds of public supply wells on Long Island.

The state Department of Health's Public Health and Health Planning Council on Thursday unanimously approved setting maximum contaminant levels of 1 parts per billion for 1,4-dioxane, an industrial solvent also present in some household products, as well as 10 parts per trillion each for perfluorooctane sulfonate (PFOS), found in firefighting foams, and perfluorooctanoic acid (PFOA), used in nonstick and stain-resistant products.

They are the first chemicals to be newly regulated by New York since 2000. The action caps a five-year process that generated 7,000 public comments and forced local water districts to initiate construction of complex new treatment systems estimated to cost a total of nearly a billion dollars.

What is 1,4-dioxane?

A synthetic industrial solvent that is also found in trace amounts in some household and personal care products, such as laundry detergent. The U.S. EPA classifies it as a likely human carcinogen. It has been found in more than 70% of public water supply wells on Long Island. The state will enforce a maximum contaminant level in drinking water of 1 part per billion.

PFOA and PFOS standards already have been set by several other states, though New York is the first to finalize one for 1,4-dioxane, officials said. The federal government has no standards for any of the three.

"I think we're a little part of history here today," said Jeffrey Kraut, chair of the Public Health and Health Planning Council, adding that the decision would benefit Long Islanders "who are very, very concerned about our aquifer."

On Long Island, PFOS and PFOA have been found at high levels at select wells, including near the Gabreski Air National Guard Base in Westhampton Beach and a fire training academy in Yaphank. But 1,4-dioxane is far more prevalent, with 70% of wells found to have at least trace amounts of the solvent and several — such as in Bethpage and Hicksville — with many times above the new state standard of 1 ppb.

Chronic, lifelong exposure to 0.35 ppb of 1,4-dioxane represents a one-in-a-million cancer risk, according to the Environmental Protection Agency. The fact that the state adopted a drinking water standard nearly three times higher has disappointed some environmental and health advocates, who now are lobbying for frequent reviews that would allow revisions.

“People have been exposed to these chemicals that are known to have terrible health consequences for a long time, and the fact that, now, five years later, we are finally at a point of adopting these standards, has been slow going,” said Liz Moran, environmental policy director for the New York Public Interest Research Group, which has advocated for stricter drinking water standards for the contaminants. “But thankfully this is the right path.”

What are perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid (PFOA)?

Fluorinated organic compounds that are considered “forever chemicals” because they persist in the environment and don’t break down. PFOS was commonly used in firefighting foams and PFOA in nonstick and stain-resistant materials. For each, the state will enforce a maximum contaminant level in drinking water of 10 parts per trillion.

Local water districts this week announced they already had spent \$150 million to plan, construct and run the advanced treatment systems needed to remove 1,4-dioxane and PFOS and PFOA from the groundwater they pump and deliver for drinking, with \$700 million more to be spent over the next six years. They noted that only two systems so far, in Bethpage and Central Islip, are fully operational, though 18 have been completed and are in the approval process, and 50 more are in the design or construction phase.

“Water providers stand proud of all of the progress made in such a short amount of time,” William Schuckmann, chairman of the Nassau/Suffolk Water Commissioners Association, said in a statement.

State health officials formally recommended the new standards last July. One of the more significant revisions came in January, when they added a deferral option for local water providers worried about the cost and complexity of compliance.

If approved by the state, the providers can receive up to 36 months before violations of the new maximum contaminant levels will be issued, as long as they are meeting the state’s requirements for monitoring wells and installing the needed treatments.

Eric Goldstein, a senior attorney with the Natural Resources Defense Council, said the state must ensure deferrals aren’t liberally granted.

“They should be used sparingly for water providers confronting exceptional challenges,” he said. “If it becomes the norm and everyone automatically gets a deferral, that would be unfortunate. The sooner these contaminants are removed from our drinking water supplies, the better.”

Even with state and federal grants, water providers have said rate increases will be necessary to help pay for treatment systems to remove 1,4-dioxane, PFOA and PFOS. Many also are suing the chemical manufacturers and distributors that caused the contaminants to seep into the aquifer.

Those cases are still active, but the American Chemistry Council, a trade association representing some of those companies, said in a statement that the state “did not appropriately consider the impacts of the new standards on water suppliers.”

The council noted the state acted despite the EPA recently deciding to start the process to establish national standards for PFOA and PFOS. The EPA deferred a decision on 1,4-dioxane, but the council said New York’s 1 ppb standard is far lower than a previous World Health Organization recommendation.

“Regulatory authorities around the world, including Health Canada and the WHO, have recognized that 1,4-dioxane does not pose a health risk at current environmental levels,” the council said.

But Goldstein said the state rightfully did not wait on the EPA and other organizations to act.

“The federal government has dropped the ball, and thankfully New York State is now stepping up,” he said.

Drinking water standards

- **1,4-dioxane:** A synthetic industrial solvent that is also found in trace amounts in some household and personal care products, such as laundry detergent. The U.S. EPA classifies it as a likely human carcinogen. It has been found in more than 70% of public water supply wells on Long Island. The state will enforce a maximum contaminant level in drinking water of 1 part per billion.
- **Perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid (PFOA):** Fluorinated organic compounds that are considered “forever chemicals” because they persist in the environment and don’t break down. PFOS was commonly used in firefighting foams and PFOA in nonstick and stain-resistant materials. For each, the state will enforce a maximum contaminant level in drinking water of 10 parts per trillion.

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The Weather Channel

<https://weather.com/safety/hurricane/news/2020-07-30-tropical-storm-isaias-puerto-rico-dominican-republic-haiti-impacts>

Tropical Storm Isaias Triggers Flooding, Knocks Out Power to Tens of Thousands in Puerto Rico

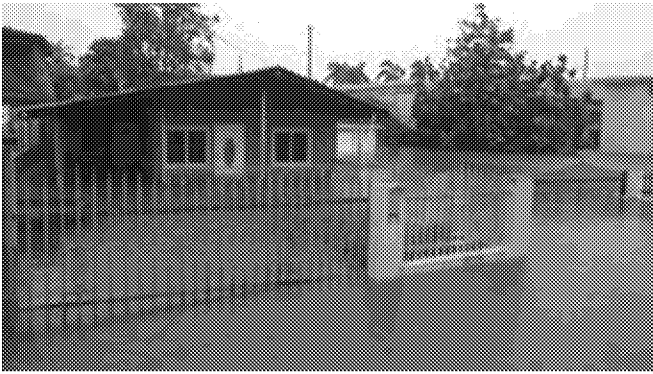
By Ron Brackett

July 30, 2020

Puerto Rico, much of which still hasn’t fully recovered from Hurricane Maria, was dealt another blow Thursday by Tropical Storm Isaias.

Flooding and small landslides affected much of the island, but the heaviest impacts were in the southern regions of the U.S. territory as Isaias (ees-ah-EE-ahs) churned toward the Dominican Republic and Haiti.

More than 448,000 customers had no electricity Thursday because of the storm, Fernando Padilla, an official with the Puerto Rico Electric Power Authority, told Primera Hora. Not only were lines down in various communities, he said, transmission lines that carry electricity from the south to the north were also not working. Padilla said repairs won’t be made until weather conditions improve and the lines can be inspected.



Flooding from Tropical Storm Isaias was particularly heavy on the southwest side of Puerto Rico, including in Cabo Rojo, on Thursday, July 30, 2020.

About 14 miles to the west, the town of Lajas also had no electricity.

"This has been worse than I expected. The winds are very strong and it is raining a lot. Dozens of trees have fallen," Mayor Marcos Irizarry told El Dia Nuevo.

Downed trees, flooded roads and small landslides also were reported on the eastern end of the island.

Las Piedras Mayor Miguel López Rivera told Primera Hora many areas of the town were flooded, but water had not entered any homes.

The town of Humacao had no electricity or drinking water, Mayor Luis Raúl Sánchez said.

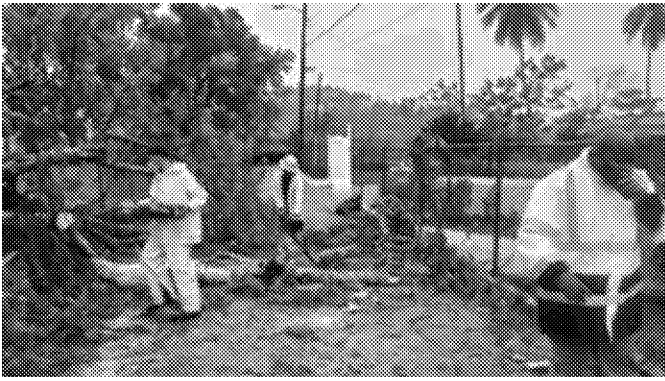


Three gates on the Carraízo reservoir dam in Trujillo Alto, Puerto Rico, were opened Thursday, July 30, 2020, because of runoff from Isaias, according to Doriel Pagán Crespo, president of Puerto Rico's Aqueduct and Sewer Authority.

Three gates on the Carraízo reservoir dam in Trujillo Alto, Puerto Rico, were opened because of runoff from Isaias, according to Doriel Pagán Crespo, president of Puerto Rico's Aqueduct and Sewer Authority.

About 150,000 customers lost water service because of the storm, Pagán Crespo told El Nuevo Dia, because of electric blackouts and blocked intakes.

Pagán Crespo also said the agency was monitoring the dams of the Toa Vaca reservoirs in Villalba and La Plata because runoff in that area had also begun to increase.



Workers remove a tree felled by Tropical Storm Isaias in Trujillo Alto, Puerto Rico, on Thursday, July 30, 2020.

President Donald Trump approved an emergency declaration request from Puerto Rico's Gov. Wanda Vázquez Garced, the Associated Press reported.

Heavy rain and gusty winds are expected to continue in Puerto Rico through the morning before conditions improve later in the day. Conditions were deteriorating on the island of Hispaniola, where tropical storm warnings were issued for the Dominican Republic and Haiti.

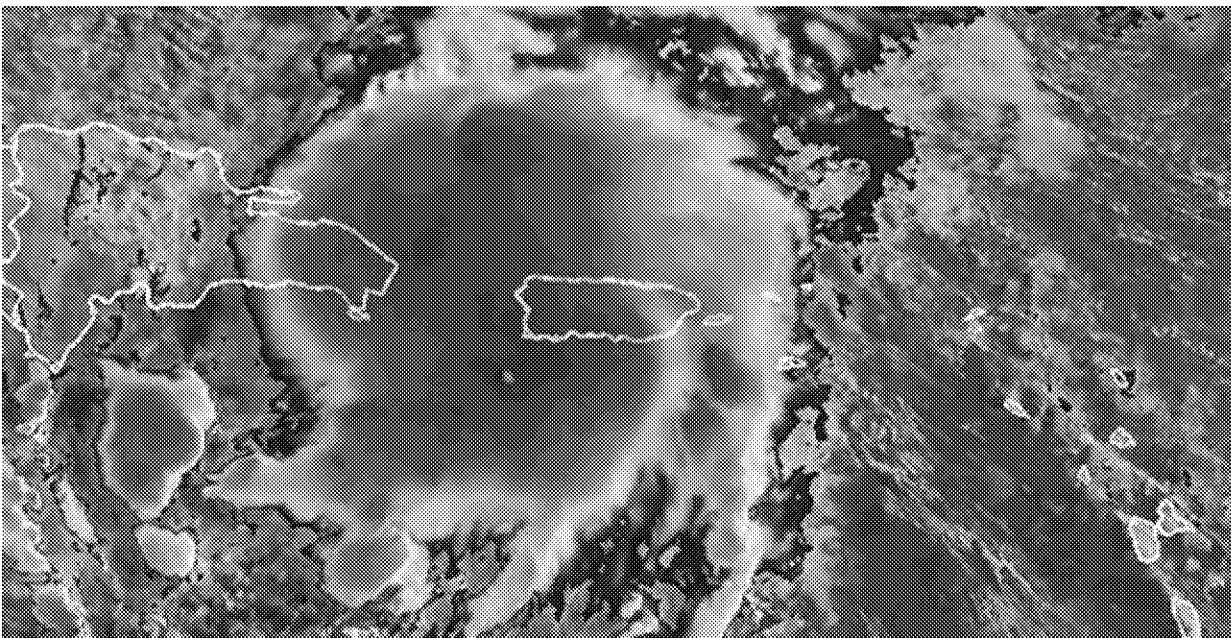
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Greenwire

https://www.eenews.net/greenwire/2020/07/30/stories/1063656469?utm_medium=email&utm_source=eenews%3Agreenwire&utm_campaign=edition%2BiZ%2B%2FftFV%2B2LxUfHtNSbxJQ%3D%3D

Storm Isaias unleashes flooding, landslides in Puerto Rico

July 30, 2020



Tropical Storm Isaias is the earliest ninth Atlantic named storm to form. @NOAASatellitePA/Twitter

Tropical Storm Isaias battered Puerto Rico today as it continued on a forecast track toward the U.S. mainland, unleashing small landslides and causing widespread flooding and power outages on an island still recovering from previous hurricanes and earthquakes.

Especially hard hit by the storm's maximum sustained winds of 60 mph was Puerto Rico's southern region, which is still being shaken by daily tremors. Santos Seda, mayor of the southwest town of Guánica, told the Associated Press that he has received reports of downed trees and inundated neighborhoods where earthquake-damaged homes still stand.

"The emotional state of people is deteriorating more every day," he said, adding that crews will fan out to assess damage once the weather clears.

Isaias was centered about 125 miles west of Ponce, Puerto Rico, and about 105 miles east-southeast of Santo Domingo, Dominican Republic, this morning, according to the U.S. National Hurricane Center. It was moving west-northwest at 20 mph, and its center was expected to move over Hispaniola later today and near the southeastern Bahamas by early tomorrow.

The storm knocked out power to more than 300,000 clients across Puerto Rico, according to the island's Electric Power Authority. Minor damage was reported elsewhere in the island, where tens of thousands of people still use tarps as roofs over homes damaged by Hurricane Maria in September 2017.

José Pagán, a 22-year-old who lives in the eastern mountain town of Juncos, said his power went out before dawn.

"I didn't think it was going to be this strong," he said of the storm, adding that his home is slightly flooded. "It's a rather difficult experience because it reminds us of Maria."

The hurricane center said Isaias, for now, is not expected to become a hurricane before reaching the U.S. mainland.

"Isaias is sending some mixed signals," the forecast discussion stated. "Model forecasts are showing a complex evolution of the tropical cyclone during the next day or two."

Isaias is the earliest ninth Atlantic named storm to form, according to Colorado State University hurricane researcher Phil Klotzbach. The previous record was Irene on Aug. 7, 2005, Klotzbach tweeted.

So far this year, Cristobal, Dolly, Edouard, Fay, Gonzalo and Hanna have also been the earliest named Atlantic storms for their alphabetic order. — *Dánica Coto, Associated Press*

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EngeryWire

https://www.eenews.net/energywire/2020/07/30/stories/1063652209?utm_medium=email&utm_source=eenews%3Aenergywire&utm_campaign=edition%2BiZ%2B%2FtFV%2B2LxUfHtN5bxJQ%3D%3D

Puerto Rico power company says 'sabotage' may be behind blackout

July 30, 2020

The head of Puerto Rico's power company said a blackout Tuesday that affected more than 400,000 customers was a "man-made" event that could have been an act of "sabotage."

Speaking to WKAQ radio yesterday, Puerto Rico Electric Power Authority CEO José Ortiz said that he will be asking the U.S. Department of Homeland Security and the Federal Bureau of Investigation to examine the incident that knocked out power to a large swath of the island for several hours Tuesday.

"What I can tell you is that there was manipulation," he said of the blackout. "Either this was an oversight on someone's part or it was an act of sabotage."

Ortiz said a breaker box had been manually tripped "taking away all the safeguards."

The news comes as tensions are running high between the power company, known as Prepa, and the UTIER electrical workers' union. The Union has been staging a series of protests and strikes against Prepa's decision to outsource the power transmission and distribution system to a U.S.-Canadian consortium called Luma Energy.

On the same radio program, UTIER President Ángel Figueroa Jaramillo blamed the blackout on the islands' ailing infrastructure and dared Ortiz to reiterate his sabotage claim under oath.

Puerto Rico, a U.S. commonwealth of 3.2 million people, expected heavy rains and flash flooding late yesterday that officials warned would likely lead to more power outages. — *Jim Wyss, Bloomberg*

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The Virgin Islands Consortium

https://viconsortium.com/vi-hurricane_season/virgin-islands-dpnr-to-residents-stay-away-from-beaches-throughout-territory-until-further-notice-

DPNR to Residents: Stay Away From Beaches Throughout Territory Until Further Notice

July 29, 2020



The Department of Planning and Natural Resources has announced that in anticipation of the approaching weather system, the Division of Environmental Protection (DEP) is expecting negative environmental impacts caused by storm-water runoff.

To that end, DPNR has advised the public to refrain from using the coastal waters throughout the territory until further notification. DPNR is also advising parents to instruct their children to keep away from storm water-impacted beaches as well as areas with manholes and storm water flooding. There may be an elevated health risk to anyone swimming in storm water-impacted areas as a result of increased concentrations of bacteria, oil and chemicals.

All persons should also be aware that storm water runoff may also contain contaminants or pollutants harmful to human health and therefore all persons should avoid areas of storm water runoff (i.e. guts, puddles, and drainage basins). DPNR will continue to monitor the impacted areas and waters.

DPNR urged the public to complete the following tasks to protect your drinking water resources in preparation for an impending hurricane disaster and the resulting potential water resources emergency:

1. Downspouts leading to cisterns should be completely disconnected or blocked securely to protect the water source.
2. A two-week supply of potable water should be stored in a safe weatherproof place, preferably indoors. This water supply will provide water for drinking, cooking, and bathing. To figure out how much water you will need for a two (2) week supply: multiply the number of residents by 20 gallons per person per day and then multiply that number by 14 days. For example, a family of four should store 1120 gallons of water. (Example: 4 people x 20 gallons/person/day x 14 days = 1120 gallons)
3. An adequate supply of disinfecting agents [liquid chlorine containing 5.25% sodium hypochlorite (i.e. Clorox), powdered chlorine (active ingredient calcium hypochloride) or iodine] should be on hand and stored in a safe place.
4. A supply of sterile potable water bottles and other suitable containers should be secured to store water.
5. A list of emergency water supplies may be obtained from the Division of Environmental Protection of DPNR on St. Thomas or on St. Croix.

As a reminder, these precautions should be taken only if a major storm or hurricane is imminent and poses a severe threat to your water supply, D.P.N.R. said.

The government agency further advised that all contractors, developers, and home builders to immediately maintain and implement additional erosion and sediment control measures at all areas where property is cleared, graded, filled, or otherwise disturbed.

This opportunity should also be taken to locate areas that may need additional erosion and sediment control measures and install them. Measures include, but are not limited to the following:

- Preservation of natural vegetation
- Clean / Clear Drainage Swales / Diversions
- Install Temporary & Permanent Seeding
- Add Soil Sealers / Binders
- Install Erosion Control Mats
- Add / Build Soil Retaining Walls
- Assess Construction Entrances / Exits
- Install / Fix Silt Fencing
- Clear Sediment Traps
- Add Mulch, Mats & Geotextiles

It is also advised that all construction materials and equipment be removed from sites or be properly secured. This includes all items likely to become airborne objects that may cause damage to yours or an adjacent property.

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InsideEPA.Com

<https://insideepa.com/environment-next-news/mayors-covid-green-recovery-strategy-targets-climate-change-equity>

Mayors' COVID 'green recovery' strategy targets climate change, equity

July 29, 2020

A coalition of mayors from major cities including Los Angeles and New York is launching a COVID-19 recovery strategy that combines policies targeting climate change and environmental justice (EJ), eyeing the recovery as a chance to advance key sustainability goals.

The new "COVID-19 Recovery Task Force" announced July 15 by the coalition C40 Cities -- whose members also include Chicago, Boston, and other large U.S. cities -- adds to political momentum linking climate change and EJ.

Presumptive Democratic presidential nominee [Joe Biden's expanded climate and environmental platform](#) embraces calls for a major governmental reorganization to elevate EJ and climate change concerns, echoing calls from some Democrats in Congress.

The C40 Cities initiative comes as EJ advocates fear the [COVID-related recession could derail New York's pioneering climate and EJ law](#) as the state's budget faces a huge shortfall. But the plan adopts "Global Green New Deal" principles that could help the city and others place a strong emphasis on "social justice" in efforts to rebound from the crisis.

[Announcing the new effort](#), the mayors' group says, "It is clear that the harm caused by COVID-19 has not been equitable" and as leaders of major cities across the globe "our ambition should not be a return to 'normal' - our goal is to build a better, more sustainable, more resilient and fairer society out of the recovery from the COVID-19 crisis." Returning to "business as usual" would continue "a world on track for 3°C or more of overheating," the group says in its list of nine guiding principles.

A report detailing the mayors' "[Agenda for a Green and Just Recovery](#)" calls on all national and regional governments, central banks and international financial institutions to support the C40 Cities' effort. "They must commit to ensuring that all economic recovery funds and stimulus packages support a fair and sustainable transition," the group says, and underscores that "The only stimulus should be green stimulus," clean energy should be a priority, and all public investments in fossil fuels should end. A "renewables-based grid" and building retrofits are among the guidance the agenda promotes.

The world's largest investment management firm, BlackRock, is among the financial institutions that have already committed to promoting "sustainability" and climate issues, most recently [reporting that it had cast protest votes against the management of Exxon Mobil](#) and 52 other major companies for failing to promote sustainability and warning another 191 companies they face similar votes if they do not make more progress.

'Decarbonization Solutions'

Meanwhile, a coalition of major industrial sectors in its COVID-19 recovery proposals is urging Congress to focus on decarbonization and clean energy in any further stimulus package.

A few days after the C40 Cities announcement, another group -- the Industrial Innovation Initiative (I³) -- sent a letter to Congress on July 23 recommending COVID-19-related federal economic recovery legislation focused on “decarbonization solutions” that would both create industrial-sector jobs in Midwestern and Gulf Coast states and tackle climate change.

The initiative is a partnership between Great Plains Institute, which seeks to transform the energy system to create green jobs and help the environment, and the World Resources Institute, a national sustainability think tank. Participating organizations include some of the United States’ largest cement, steel, and chemical manufacturers who along with NGOs and other stakeholders “worked to identify policies that could support industry and American workers while incentivizing investment in advanced energy efficient and low-carbon technologies, processes, products and markets within the industrial sector,” according to the July 23 letter.

The recommendations to advance the I³ agenda include promoting low- and zero-carbon process heat (e.g. blue and green hydrogen and electrification); carbon capture, transport, utilization and geologic storage; energy efficiency and materials management; and other innovative industrial applications and practices that can reduce emissions well below current best practices and establish pathways to decarbonize the industrial sector by midcentury.

Decarbonizing industrial sectors is the focus of a research program in the Department of Energy’s National Renewable Energy Laboratory that recently touted a breakthrough in an electrochemical process that for the first time converts carbon dioxide at a scaled-up level that could help advance “the future” of a shift from fossil fuel power to emissions-free electricity as the U.S. economy’s foundation. -- *David Clarke*

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InsideEPA TSCA

<https://insideepa.com/tsc-insider/epa-returns-chemical-prioritization-new-tsca-evaluations-loom?s=eml>

EPA Returns To Chemical Prioritization As New TSCA Evaluations Loom

July 29, 2020

EPA appears to have quietly begun work developing a third group of existing chemicals it will eventually prioritize for evaluation under TSCA even as it struggles to complete the evaluations for the first round of 10 and finalize scoping documents that will guide its evaluations for the second round of 20.

EPA officials signaled their effort most recently during last week’s meeting of the Children’s Health Protection Advisory Committee (CHPAC), where the panel agreed to an agency request to create a workgroup that will advise the Office of Pollution Prevention and Toxics (OPPT) on the 60-plus chemicals that remain on the agency’s Obama-era workplan list from which the office will select and prioritize substances for future evaluation.

Stan Barone, deputy director of OPPT’s risk management division, told the group that the agency will now look at those chemicals that remain on the so-called workplan list. He asked the advisers to provide early recommendations priority chemicals, children’s health issues related to any of the chemicals, as well as any children’s health relevant-data gaps, to help the agency before it begins formally prioritizing and scoping the chemicals for evaluation.

He said the agency is looking for “recommendations that the work group can identify for us early, prior to our prioritization and scoping that can inform our prioritization scoping and can inform our data collection activities as there's critical data that may be missing for evaluation of children's environmental health.”

Such efforts appear to be driven by a statutory deadline that requires the agency to complete its data gathering for the next round of prioritizing chemicals for risk evaluation by early next year.

But Barone's comments are not the first indication that EPA is turning its attention to prioritizing future chemicals for evaluation. Last month, EPA announced that it will soon propose a rule under TSCA section 8 that would add specific “workplan” chemicals to the agency's existing reporting and record-keeping regulations.

In addition, David Fischer, deputy assistant administrator in EPA's Office of Chemical Safety & Pollution Prevention (OCSPP), suggested last month that such rules are intended to improve the agency's process for prioritizing and evaluating chemicals according to the steep timelines Congress spelled out when it revised the Toxic Substances Control Act in 2016.

Such data gathering efforts, he said, are part of the agency's broader push to implement the revised law and its steep deadlines in a way this is sustainable. As such, he said, the agency is working to “front-load” the system, in part by overhauling its process for prioritizing chemicals for evaluation.

While the law sets deadlines and lays out a prioritization process for EPA to determine chemicals high priority for evaluation, the agency had previously considered an effort to formalize a pre-prioritization process outside of those strict deadlines. But the agency was forced to drop it as it lacked stakeholder consensus.

Instead, EPA in 2018 released a white paper which indicates that for the short-term, the agency will follow an approach where it will select chemicals based on statutory language that requires at least half of priority chemicals be drawn from the work plan chemicals.

But the white paper also outlines a new, long-term approach that EPA is developing to group or “bin” chemicals by toxicity and other attributes.

Fischer said the agency is not trying to prioritize earlier. “It's that we are trying to make sure we have the data, the pieces in place, before we start that clock. Because once the clock starts, we can't stop it. Once you put a chemical in the prioritization process, it either comes out a high priority or a low priority. There is no in-between. no ability to pull a chemical out of that process once it's started.”

The comments relate to officials' concern, learned from the first 10 evaluations, about the potential for significant research gaps regarding existing chemicals, which can hobble evaluation.

While EPA is seeking to improve the efficiency of its processes for prioritizing and evaluating chemicals, it is still struggling to complete nine of the first 10 evaluations it began in 2017. And officials have yet to finalize the scoping documents that will guide its evaluations of the next 20 chemicals subject to evaluation -- all of which were due by June 22 -- a point officials have acknowledged.

Officials have shared a proposed timeline for EPA's risk evaluation process that signals the agency will almost certainly not be able to comply with its statutory deadlines.

For example, in addition to gathering data for its next round of prioritizations by early next year, EPA is scrambling to finalize already-delayed evaluations for nine substances, begin drafting evaluations for the next 20, as well as a handful of first-time manufacturer-requested evaluations, begin developing a draft supplemental evaluation of asbestos' legacy uses, and begin crafting risk management rules to comply with steep 2022 deadlines to address unreasonable risks that the first 10 evaluations identify.

The existing chemical program “has been, and will continue to be very busy through 2020,” OCSPP’s chief Alex Dunn said recently, noting that the agency is currently reviewing 33 chemicals -- the first 10, second 20 and three manufacturer-requested evaluations -- the most it has ever evaluated at any one time.

Dunn said that the current agenda is “unsustainable,” noting, for example, that if the current structure were maintained, the agency’s Science Advisory Committee on Chemicals (SACC), which peer reviews draft evaluations, would have to meet for 20 weeks in 2021.

However, their hurdle is not going to get any easier as the agency will have only two years to propose risk management regulations to address any unreasonable risks. So far, EPA has only completed its evaluation of methylene chloride, which has already drawn a legal challenge.

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Newsday

<https://www.newsday.com/long-island/environment/water-providers-new-state-standards-1.47494898>

Water providers say millions more will be needed to meet state standards

By Paul LaRocco

July 29, 2020

Long Island water providers on Wednesday said they will have to spend hundreds of millions of dollars over the next few years to meet new state drinking water standards for emerging contaminants — all but assuring ratepayers they will share in the burden.

The state Department of Health on Thursday is expected to adopt its first-ever maximum contaminant levels for three chemicals: 1,4-dioxane, a likely carcinogenic industrial solvent also found in trace amounts in household products; perfluorooctane sulfonic acid (PFOS), used in firefighting foams; and perfluorooctanoic acid (PFOA) found in stain- and water-resistant material.

Together, the three are present in about 70% of public water supply wells on Long Island, with 1,4-dioxane the most prevalent. So far, only two wells — in Bethpage and Central Islip — have fully approved and operational systems to remove 1,4-dioxane below the expected standard of 1 part per billion.

Twenty more systems are awaiting final state approval, 35 are in the pilot testing phase and an additional 50 are being designed or constructed, officials said at a news conference on the grounds of the Hicksville Water District, where one of the systems is being tested.

Local water districts said they already have spent \$150 million on these treatment systems, which rely on an advanced oxidation process, known as AOP, along with more traditional carbon filtering.

To meet the new state standards — which Gov. Andrew M. Cuomo has called the most protective in the nation — providers estimate they’ll need to spend \$350 million within the next year and \$350 million more over the five years that follow.

The state last year awarded \$120 million in grants to the local water districts to help pay for these systems, and more state and federal grants are expected. Many districts also have filed lawsuits that seek compensation from the large manufacturers that caused 1,4-dioxane to contaminate the groundwater over decades.

Still, Paul Granger, superintendent of the Hicksville Water District, which has a well with Long Island's highest level of 1,4-dioxane, was blunt.

"Rates will go up," he said. "I've been in this business 30 years and this is one of the biggest challenges I've seen."

Other water providers in the state will grapple with meeting the new standards, but the problem is heightened on Long Island because the aquifer is residents' sole drinking water source.

In some areas, emerging contaminants must be dealt with alongside high levels of traditional cancer-causing industrial chemicals that have formed large toxic groundwater plumes. Northrop Grumman and the U.S. Navy are negotiating with the state Department of Environmental Conservation to enact a \$585 million cleanup on the largest such plume, which is spreading beneath Bethpage and surrounding communities.

The COVID-19 pandemic, meanwhile, has placed additional financial strain on local water districts.

"There are still large budget gaps we need to make up to pay for the rest of the treatment," said Richard Passariello, Roslyn Water District superintendent and chairman of the Long Island Water Conference, which represents local providers.

Once the new standards are published in the state register, local water providers, depending on how many customers they serve, will have between 60 days and six months to begin testing for the three contaminants. Most on Long Island, however, already conduct these tests.

Passariello noted that water districts have been preparing for the new standards for several years. The Health Department in July 2019 made the recommendations expected to be adopted Thursday by the Public Health and Health Planning Council.

"We cannot stress enough to the public that we have been on top of this issue since it began," Passariello said.

While some public health advocates have said the new standards don't go far enough — and have taken too long — others lauded the action finally being taken.

"This is a new beginning for clean drinking water protection," Adrienne Esposito, executive director of the advocacy group Citizens Campaign for the Environment, said in a statement.

Water providers often have found themselves straddling a fine line in arguing that they always have ensured safe drinking water, but that compliance with new regulations will pose real challenges.

But they avoided criticizing the state on Wednesday.

"They have done the science and they made the decision as to what the standard is," Joe Pokorny, Suffolk County Water Authority deputy chief executive for operations, said of the state. "As a water supplier, my responsibility is to treat the water and make sure that it meets those standards."

NATIONAL

EPA's New Asbestos Determination May Upend Decades of Science and Impact Litigation

<https://www.natlawreview.com/article/epa-s-new-asbestos-determination-may-upend-decades-science-and-impact-litigation>

Wednesday, July 29, 2020

Reporter: Clifford V. Pascarella II

The word “asbestos” is a term colloquially known as a hazard. Below the surface, though, while the average person knows from television ads that they may be entitled to compensation if they are exposed to asbestos, they almost surely do not know that asbestos is a naturally occurring mineral or the scientific details of the nature of the risks associated with asbestos exposure. Accordingly, trial attorneys are faced with a situation whereby they must assume that jurors carry with them these baseline beliefs and information gaps when litigating cases. The result is the need for attorneys to heavily rely on experts to combat preconceived notions and effectively educate the jury on the technical nuances and development of the science of asbestos hazard classification.

Regulatory agencies have heavily impacted the asbestos litigation given their continuous evaluation of substances and their hazards. With respect to asbestos, history shows regulatory fluctuations on a timeline as science and technology have evolved. In recent history, we have seen changes in how regulators approach certain minerals, including talc, and from these new approaches, positive scientifically founded change may be on the horizon. However, recent regulatory movement concerning the evaluations of potencies of different types of asbestos fibers are ominous signs of regulatory action that could upend what were long-standing consensus opinions from the scientific community often relied on by defendants in the asbestos litigation.

Asbestos – Where Federal Definitions Stand Now

Federal regulations define “asbestos” as a term that collectively or individually refers to six minerals in their asbestiform:

- Chrysotile (the asbestiform of the serpentine minerals)
- Grunerite asbestos a/k/a amosite (amphibole mineral)
- Riebeckite asbestos a/k/a crocidolite (amphibole mineral)
- Tremolite asbestos (amphibole mineral)
- Anthophyllite asbestos (amphibole mineral)
- Actinolite asbestos (amphibole mineral)

There has been a long-standing consensus between OSHA, MSHA, EPA, and CPSC supporting this definition. These six specific minerals are regulated because of their prevalence in commerce. In fact, the word “amosite” comes from the name Asbestos Mines Of South Africa, where the mineral was mined. Deposits of chrysotile, amosite, and crocidolite were heavily mined for their commercial value while anthophyllite, tremolite and actinolite were extracted during mining as intergrowths in these deposits. In their asbestiform, all of these minerals can be crushed into very thin, very durable, and flexible fibers. These characteristics, with particular regard to chrysotile, amosite, and crocidolite, allowed these mineral fibers to be woven and otherwise

incorporated into numerous products and equipment to improve resistance to friction, corrosion, and extreme temperatures. While these unique mineralogic characteristics have benefits, they also have disadvantages.

How Asbestos Is Regulated Now

According to OSHA, the unique mineralogic properties of these six minerals in their asbestiform make them resistant to the body's natural defenses and this bio-persistence can have a carcinogenic effect. However, there is a general consensus among regulators that not every type of fiber had the same potency (i.e., toxicity). Factors that influence the toxicity of a fiber include fiber size, bio-persistence, chemical composition, and particle surface characteristics. These differences have resulted in federal agencies having different definitions of asbestos fibers that they regulate:

- EPA definition of an asbestos fiber: $\geq 0.5\mu$ long and Aspect Ratio $\geq 5:1$
- OSHA definition of an asbestos fiber: $\geq 5.0\mu$ long and Aspect Ratio $\geq 3:1$

For context, OSHA's definition of an asbestos fiber was created for the purpose of creating a safe work environment for employees who may be exposed to airborne asbestos fibers during the course of their workday. EPA purposely defined an asbestos fiber to ensure that an area where asbestos abatement recently occurred was clear of all airborne particles, including, but not limited to asbestos fibers.

The scientific and regulatory communities generally agree that crocidolite and amosite are the most potent of all six minerals, and all the amphibole asbestos minerals were unequivocally more potent than chrysotile. Accordingly, it should take an exposure to a higher dose of chrysotile to induce the same carcinogenic effect that exposure to a lower dose of crocidolite can yield. Nevertheless, OSHA has set one limit for exposure to all asbestos minerals:

- 0.1 f/cc every 8hrs (fibers/cubic centimeter)

In addition, EPA has placed the following limit on the amount of any asbestos minerals that products may contain:

- < 0.01 (1%)

Enforcement of one regulation for airborne asbestos exposures and one regulation for asbestos content in products is effective with respect to the six asbestos minerals in this instance. Regulators have established exposure levels to every type of asbestos that they have determined, through years of public comment and review of decades of scientific literature, that they determined present almost no risk of developing an asbestos-related disease. Treating the six asbestos minerals as a class instead of individually allows for public safety while avoiding unnecessary complications like potential "mixed exposures" to different types of asbestos. This provides objective standards for parties in litigation to use to argue their cases to juries. However, small shifts in this long-standing regulatory framework can have profound implications on litigation.

EPA's Seismic Shift Under New Risk Evaluation For Asbestos

In March 2020, the EPA issued its [new draft Risk Evaluation for Asbestos](#). The draft Risk Evaluation identifies changes by creating legal obligations for manufacturers and suppliers to report information regarding the hazards of their asbestos and asbestos-containing products prior to importing their asbestos and asbestos-containing products into the United States. However, the EPA's Risk Evaluation includes a few concerning comments that threaten to upend decades of research and regulatory policies regarding asbestos.

Most significant is the EPA's Inhalation Unit Risk (IUR) for chrysotile: 0.16 f/cc, which is being proposed because the EPA already assigned a 0.17 f/cc IUR for Libby, MT amphibole and a 0.23 f/cc IUR for mixed

asbestos (chrysotile, amosite, and crocidolite). As a threshold issue, IUR's are an estimate of the upper bound of someone's cancer risk who has a lifetime (70yrs) of exposure. While an IUR is not an evaluation of the specific risks of mesothelioma or lung cancer, IUR's should be relative to those specific risk factors. The EPA's proposed IUR for chrysotile is contrary to numerous studies that show that chrysotile is less potent than the amphibole asbestos minerals by wide margins. The broad sweeping nature of the EPA's IUR will also diminish the "chrysotile defense" used by defendants in asbestos litigation, which plays out at trial by either demonstrating that the scientific literature shows that chrysotile does not cause mesothelioma or by calculating the level of chrysotile that a plaintiff was exposed to with proof that the exposure level was below the level that science shows is necessary in order to cause disease.

Notwithstanding, the impact on asbestos litigation, blurring the divide between the potency of chrysotile and amphibole asbestos minerals that has been well-established by the scientific and regulatory community for decades, is a major shift in the perceived levels of risk among the different types of asbestos minerals. This could open the door to many questions from the public regarding the credibility and reliability of science and regulators to propose limits based on the risk evaluations of developing disease from exposure to the individual asbestos minerals.

What's Next?

The EPA's Draft Risk Evaluation for Asbestos ("DRE") generated significant attention from industrial groups, experts, and various other parties involved in asbestos litigation. All sides have significant issues with the DRE as currently drafted. With the peer review period for the DRE having ended in the first week of June, the EPA was left with more than 75 comments to consider. Many of these comments include critiques from researchers and trade groups that assert that the proposed evaluation overestimates the risk posed by chrysotile and other asbestos-containing products, and flies in the face of decades of industry, scientific, and regulatory debate and consideration.

For now, the ball is in EPA's court. If the EPA places weight on the comments criticizing the proposed standards, the EPA could choose to undergo a lengthy revision process or withdraw the proposal completely and re-work it. However, on a June 26, 2020 webinar, the EPA noted that pursuant to its obligations under the Toxic Substances Control Act (TSCA) and its evaluation requirements under the TSCA, it is firmly committed.

If the agency follows the advice of SACC members and public commenters alike, its DRE for asbestos will likely undergo a length revision process, if not a complete withdrawal and re-work. However, the EPA noted on a June 26, 2020 webinar regarding its ongoing TSCA evaluation that it is firmly committed to publishing a final rule for asbestos exposure by the end of 2020, despite the significant comments it has received. This suggests that the EPA may be prepared to push through its determination in its current form, which will significantly impact the asbestos litigation for years to come.

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Coal-Fired Utilities Given More Time to Manage Leaking Landfills

<https://news.bloomberglaw.com/environment-and-energy/coal-fired-utilities-given-more-time-to-manage-leaking-landfills>

July 29, 2020, 5:07 PM

Reporter: Sylvia Carignan

- Agency extends compliance deadlines
- More coal ash disposal facilities leaking

The Environmental Protection Agency will allow coal-powered utilities extra time to figure out how to dispose of coal ash, despite finding that more ash landfills are leaking.

The EPA found more leaking and unlined coal ash landfills in new reporting data, compared to a 2015 analysis, according to the rule (RIN:2050-AH10) announced Wednesday. The utilities using those landfills are incurring higher costs sooner than expected, the agency said.

By extending compliance deadlines, industry costs are reduced, according to the rule, but environmental contamination could continue.

The National Rural Electric Cooperative Association had met with the agency in January to express their concerns about the deadlines. Each co-op has site specific considerations to consider when siting storage space for the ash, including flood plains and the threat of hurricanes, the association's members said.

Those considerations made it difficult to choose which deadline extension to request, the association said.

"By recognizing the time needed to design, permit, and construct alternative disposal capacities, and acknowledging the potential for delays in permitting and construction due to circumstances beyond industry's control, EPA has developed a technically sound and attainable rule that will ensure environmental protection," said Jim Roewer, executive director of the Utility Solid Waste Activities Group, which represents electric utilities and industry associations.

States' Concerns

The EPA had proposed that utilities with certain types of coal ash storage facilities, particularly those that were more prone to leakage, stop accepting more waste by Aug. 31. The agency has decided to extend its compliance deadlines to April 2021 and beyond.

Attorneys general from Maryland, Pennsylvania, Illinois, Michigan, and Vermont said extending deadlines to comply with regulations to dispose of coal ash would worsen water pollution near ash ponds and landfills.

Coal combustion residuals, or coal ash, are the waste generated by coal-fired power plants.

Coal ash contains metals such as arsenic, chromium, and mercury that pose risks to public health and the environment, especially if they spill into water supplies. Environmental groups have argued that allowing utilities more time to dump coal ash, instead of removing it, increases the chance of a leak or spill.

Court Order

Lisa Evans, senior counsel for Earthjustice, said coal ash is polluting drinking water, lakes, rivers, and streams around the country.

"This is yet another time that the administration put the interests of lobbyists before the health of Americans. We'll see the Trump administration in court," Evans said.

The EPA is rewriting its 2015 coal ash disposal rule after environmental and industry groups challenged the rule in court.

As ordered by the D.C. Circuit Court of Appeals, the agency will not consider clay or packed soil linings to be sufficient to prevent coal ash landfills from leaking potentially harmful substances into the environment.

The agency also is working to finalize a federal permit program that would spell out compliance deadlines, application requirements, modification procedures and other details for electric utilities operating coal ash ponds or landfills outside of states with EPA-approved permit programs.

The EPA received more than 67,000 comments on the draft version of the Wednesday rule. The final rule won't go into effect until after it's published in the Federal Register.

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EPA looks to other statutes to expand scope of coming 'secret science' rule

<https://thehill.com/policy/energy-environment/509663-epa-looks-to-other-statutes-to-expand-scope-of-coming-secret>

BY REBECCA BEITSCH - 07/29/20 04:51 PM EDT

The Environmental Protection Agency (EPA) will work to expand the scope of its coming regulation that will limit what types of scientific research the agency can consider by applying it to several more individual statutes.

Speaking at a Heritage Foundation event, EPA Administrator Andrew Wheeler said the agency would apply the rule to the Clean Water Act, the Clean Air Act and other major environmental protection statutes through a series of implementing regulations the agency will issue through 2023.

Wheeler described the rule as a way to “make available to the public the science that we use that forms the basis for our regulations.”

“We'll finalize our science transparency regulation before the end of this year, and then ... we will go through each of our major statutes for science transparency and we'll complete that process,” he added.

The scope of regulation Wheeler seeks to expand limits the agency's ability to consider scientific studies that don't make their underlying data public — something critics say will limit consideration of landmark public health research that cannot release peoples' personal health information.

The agency has dubbed the proposal a transparency measure, first pushed under former EPA Administrator Scott Pruitt, who said limiting the types of studies weighed by the agency would battle “secret science.”

The proposal was reissued in March after widespread criticism, but the latest version is also facing pushback from the scientific community.

The EPA's independent Science Advisory Board, which reviews the scientific underpinning of EPA regulations, wrote in a review released Tuesday that it had “concerns about the scientific and technical challenges of implementing” the rule.

EPA has been criticized for failing to find ways to use studies that need to keep personal and business data confidential. But various science advocacy groups have argued the overall policy is flawed as researchers look at methods and conclusions — not raw data — when evaluating scientific studies.

Wheeler's direction to extend the so-called Strengthening Transparency in Regulatory Science rule statute by statute follows the agency's playbook for changing how it analyzes the costs and benefits of each rule.

Critics say the first iteration for the Clean Air Act would hamstring future administrations from implementing air pollution regulations.

Andrew Rosenberg with the Union for Concerned Scientists, which has opposed the science transparency proposal, said the agency is "playing a legal strategy game," by working to imbed it in a number of statutes.

"The problem is they are still applying non scientific criteria to deciding what the best available science is and that's never going to work no matter how many ways you slice it. It just doesn't make sense," he said.

"This will undermine the ability of EPA and other agencies to protect public health for years until it can all be undone so I hope the court does not let them do this sleight of hand," he added.

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Wheeler dismisses study claiming EPA role in elevated air pollution, COVID-19 cases

<https://energynews.us/2020/07/30/national/wheeler-dismisses-study-claiming-epa-role-in-elevated-air-pollution-covid-19-cases/>

WRITTEN BY: Kathiann M. Kowalski

July 30, 2020

The study linked the EPA's relaxed enforcement during the pandemic with higher air pollution and COVID-19 cases.

U.S. Environmental Protection Agency Administrator Andrew Wheeler said he had not read a study linking the agency's relaxed pollution enforcement during the pandemic with air pollution increases and elevated COVID-19 cases and deaths.

The study by researchers at American University was widely reported earlier this month. It used EPA daily air quality readings to find a 13% increase in pollution in counties with six or more facilities required to comply with routine reporting requirements. The EPA said it was freezing enforcement efforts for routine compliance requirements on March 26.

"I haven't seen that study yet," Wheeler said in response to the Energy News Network's question last week at an event in Lakewood, Ohio, where he announced federal grants for trash cleanup in the Great Lakes.

Wheeler characterized the changes as procedural. He also touted a claim that air pollution has gone down 7% since President Donald Trump took office, although he acknowledged that factors besides regulation were at work.

"Certainly some of the air reductions are attributed to fuel switching within the electric power sector, but that's not all of it," Wheeler said. Fuel switching refers to more reliance on natural gas as the market for coal has continued to decline, despite the Trump administration's efforts to prop up the coal industry.

The lakeside appearance came roughly three weeks after the release of updated research from American University researchers Claudia Persico and Kathryn Johnson, linking increased pollution to more cases and deaths from COVID-19.

The analysis found that counties where the EPA rollback may have supported increased air pollution had an average 39% more COVID-19 cases and 19% more deaths from the virus.

The particular rollback that the team focused on was a March 26 announcement that the EPA would freeze enforcement efforts for routine compliance reporting during the pandemic if self-reporting of pollution levels was more challenging because of the pandemic. The memorandum also suggested the EPA might not seek civil penalties for going over permit limits if violations were related to the pandemic.

The EPA's civil enforcement efforts largely depend on that self-reporting, Persico said. The study looked at data collected from sensors in counties with six or more sites that are required to report pollution emissions. Persico and Johnson then compared the timing of those changes in short-term pollution with county data from Johns Hopkins University on COVID-19 cases and deaths.

"We find that increases in pollution resulting from the rollback of EPA enforcement led to large and statistically significant increases in COVID-19 cases and deaths," the researchers wrote. The findings build on other research that has linked pollution to health conditions that make COVID-19 cases worse.

"It's expensive to regulate pollution, from the company's standpoint," Persico said. But the EPA relies on companies' routine reporting as the basis for its enforcement. And companies do the routine reporting because otherwise they can be subject to separate and additional penalties.

"If you remove the penalties, it might be cheaper from the company's standpoint to emit more pollution," Persico said. And even if companies don't intentionally decide to exceed their permit limits, relaxed requirements for doing the routine reporting could arguably mean a longer lag time before companies do anything to fix situations that lead to violations.

The EPA may well still be pursuing enforcement against egregious cases, so Wheeler's statement that the change doesn't affect the amount of pollution companies are allowed to emit may have some "partial truth," Persico said. "But overall what I find is that the overall effect was to increase pollution."

Even before the pandemic, other researchers had noted increases in air pollution since Trump took office, Persico said. She cited a 2019 report on particulate matter for the National Bureau of Economic Research.

Some Ohio counties failed to meet one or more standards in 2018, 2019 and 2020, even if the agency hadn't changed its compliance status, EPA data shows. The EPA also told The Atlantic last year that increased levels of particulate matter and ozone were likely due to wildfires and weather conditions.

Both types of events are becoming more frequent and extreme due to climate change. Experts have also linked health problems from climate change to nitrous oxides, volatile organic compounds and particulate matter released by burning fossil fuels.

The Trump administration rescinded the Clean Power Plan to deal with climate change, and its replacement has been criticized for potentially leading to more deaths. A July 14 General Accounting Office report also found that the EPA substantially underestimated economic damages from climate change in order to justify its plan.

The EPA has engaged in dozens of additional deregulation actions designed to ease compliance obligations for industries, as noted on the Brookings Institution's interactive tracker.

"The Trump administration has taken actions that allow more pollution overall by continuing to roll back Clean Air Act regulatory standards, impermissibly skewing some ozone nonattainment area designations by bypassing sound science, and improperly injecting political pressures to override fact-based decisions by agency staff," said Executive Director Howard Learner at the Environmental Law & Policy Center.

"The Trump administration's policies are harmful to healthier clean air for all Americans," Learner added.

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Wheeler blasts 'smear campaign' against Trump nominee

<https://www.eenews.net/eenewspm/stories/1063651607/search?keyword=epa>

Ariana Figueroa, E&E News reporter

Published: Wednesday, July 29, 2020

EPA Administrator Andrew Wheeler today slammed a key senator on Twitter for pushing a "smear campaign" against a Trump nominee.

The tweet follows Senate Environment and Public Works ranking member Tom Carper's (D-Del.) request yesterday that EPA's watchdog investigate Nancy Beck's political influence on the agency's final Significant New Use Rule (SNUR) that would restrict the use of toxic chemicals in consumer products (E&E News PM, July 28).

"Senator Carper and his staff are targeting Dr. Nancy Beck with unsubstantiated claims," Wheeler wrote on Twitter. "She was not involved in pushing for any provisions in the final SNUR rule. This isn't oversight, this is a smear campaign."

The request to look into Beck, a former industry executive and current pick to lead the Consumer Product Safety Commission, came after Carper's office received hundreds of documents that revealed her role in pressuring EPA through the Office of Management and Budget to weaken the rule and push for a loophole that would allow imports of products made with long-chain per- and polyfluoroalkyl substances (E&E Daily, April 20).

In a statement to E&E News, Carper said he is still waiting for a response from Wheeler about "a timeline and documents outlining my concerns about these apparent efforts within the White House to weaken PFAS protections."

"If Administrator Wheeler has the answers, he should send them my way instead of spending his time tweeting," Carper said.

Beck's nomination to lead the agency that regulates thousands of consumer products has garnered outcry from Democrats, advocates and some Senate Republicans (Greenwire, June 16).

Her nomination is currently stalled, as several Republicans announced their plans to vote against her (E&E Daily, June 18).

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Duckworth leads effort to expand EPA monitoring

<https://www.eenews.net/eedaily/stories/1063653281/search?keyword=epa>

Sean Reilly, E&E News reporter

Published: Thursday, July 30, 2020

This story was updated at 8:10 a.m. EDT.

EPA would have to expand and reorient its air quality monitoring program on several fronts under legislation introduced yesterday by House and Senate Democrats.

The bill would require the agency to begin fence-line monitoring for ethylene oxide and other hazardous pollutants at plants in communities with higher-than-normal cancer risks.

EPA would then have to incorporate monitoring data into its air toxics emissions standards for refineries and chemical plants, according to a summary released by Sen. Tammy Duckworth (D-Ill.) and Rep. Lisa Blunt Rochester (D-Del.), the lead sponsors in their respective chambers.

The measure, the "Public Health Air Quality Act," would also require the agency to expand its existing network for monitoring ozone, particulate matter and the four other "criteria" pollutants subject to National Ambient Air Quality Standards.

Additionally, it would add at least 1,000 air quality sensors in communities where per capita death rates from COVID—19 are at least 10% above the national average.

Researchers in the U.S. and Europe have tentatively linked air pollution exposure and vulnerability to the respiratory disease borne by the novel coronavirus. In general, COVID-19 has taken a disproportionately high toll on Black and Latino communities in the U.S.

In the midst of the pandemic, "we've seen in incredibly stark terms the compounding dangers of polluted air for front-line communities," Blunt Rochester said in a news release announcing the bill's introduction.

Ethylene oxide, a carcinogen widely used to disinfect medical equipment, became cause for alarm in Chicago and Atlanta-area neighborhoods that were home to sterilization plants after EPA heightened its view of the chemical's risks in 2018.

"We must do everything we can to protect these fence-line and front-line communities," Duckworth said.

To pay for the upgrades, as well as a new research program into environmental health disparities, the measure would authorize up to \$169 million in new spending in fiscal 2021.

Co-sponsors include Senate Minority Whip Dick Durbin (D-Ill.), Sen. Elizabeth Warren (D-Mass.), and Reps. Bobby Rush (D-Ill.) and Nanette Diaz Barragán (D-Calif.). The House and Senate bill numbers were not immediately available. The House bill number is H.R. 7822; the number for the Senate companion was not immediately available.

The measure is the latest of several pushed primarily by Illinois Democrats since early last year that would reshape various aspects of EPA's air toxics program (E&E Daily, Feb. 14, 2019). None has yet to move out of committee.

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Final EPA Rule On Lead-Free Pipes Drops Proposed Labeling Mandate

<https://insideepa.com/daily-news/final-epa-rule-lead-free-pipes-drops-proposed-labeling-mandate>

July 29, 2020

EPA has issued its final rule tightening drinking water policies that will limit the lead content in plumbing materials -- changes the agency says will protect the public from lead consumption even though the finalized version drops language from the Obama-era proposal that would have required labeling of lead-free pipes.

The agency released the lead pipes rule on July 29 alongside its announcement that it has sent for White House Office of Management & Budget (OMB) mandatory pre-publication review its long-pending final revisions to the lead and copper drinking water rule (LCR). EPA's recently updated Unified Agenda of pending regulations sets a non-binding deadline of September for finalizing the new LCR.

Although the content of the final LCR rule sent for OMB review is unclear, the final version of the lead pipes rule acknowledges push-back on the proposed labeling mandate while touting the rule's ability to curb lead exposures.

The final rule, titled "Use of Lead Free Pipes, Fittings, Fixtures, Solder, and Flux for Drinking Water," marks a "significant milestone" in implementing the Trump administration's Federal Action Plan to Reduce Childhood Lead Exposures and Associated Health Impacts, EPA says in a press release. "Along with other actions taken by EPA and our federal, state and local partners, this final rule will help protect public health -- especially children's health -- from the risks associated with lead exposure," it says.

One of the biggest changes from the 2017 proposed version to the final text, that will take effect following publication in the Federal Register is the decision to eliminate labeling mandates floated by the Obama EPA.

"Having reviewed public comments on this issue, EPA has reconsidered the matter, and EPA anticipates that the final rule's certification provisions, combined with the widespread practice of voluntary labeling by firms that obtain third party certification, will likely result in the marketing of many potable use plumbing products in a way that communicates the lead free status of the products to the purchaser without the burden of regulatory requirements to do so," the agency says in the preamble to the final rule.

That marks a reversal from the proposed version that EPA published in the Federal Register on Jan. 17, 2017 -- three days before President Donald Trump's inauguration.

In that proposal, the agency said that the new labeling requirements would ensure that individuals purchasing, installing or inspecting potable water systems can identify lead free plumbing materials. "These proposed requirements would reduce inadvertent use of non-lead free plumbing products in potable use applications and, consequently, reduce exposure to lead in drinking water and associated adverse health effects."

But the Trump administration says that after reviewing the various public comments it received on the proposed version, it now agrees with industry that labeling requirements would be redundant or inefficient.

"EPA is not requiring any lead free labeling or marking of potable products in this final rule. Several commenters made the point that labeling is not necessary if third party certification is required, because the certification itself provides adequate assurance of compliance and, therefore, the cost of labeling is not worth any incremental benefits of labeling a product that has been verified as lead free," the final rule says.

However, the rule retains significant new limits on the lead content EPA will allow in plumbing materials such as pipes, fittings, and fixtures that are used in new construction and replacement of existing plumbing -- as required by an Obama-era law.

It slashes the limit from the existing 8 percent down to 0.25 percent, codifying a mandate in the Reduction of Lead in Drinking Water Act, which was enacted in 2011.

"The final rule also requires that manufacturers or importers certify that their products meet the requirements using a consistent verification process. As a result, this new rule will reduce lead in drinking water and assure

that states, manufacturers, inspectors and consumers have a common understanding of ‘Lead Free’ plumbing,” according to a July 29 EPA press release that omits any reference to labeling.

In the press release, agency Administrator Andrew Wheeler said, “The Trump Administration is committed to providing clean and safe drinking water for all Americans. The Lead-Free rule is a critical step in EPA’s efforts to substantially improve children’s health and further the agency’s Action Plan goal of reducing children’s exposure to lead sources.”

LCR Revisions

Meanwhile, EPA announced in the same press release that it has formally submitted the final LCR revisions to OMB for pre-publication review, which typically takes 90 days but can take more or less time.

“This will be the first major update to the LCR in nearly three decades,” EPA says. It further touts the Oct. 10 proposal as taking a “proactive and holistic approach” to improving the LCR.

The LCR is a treatment technique rule that requires drinking water utilities to change the chemistry of their water treatment to control corrosion of lead service lines (LSLs) that releases lead into drinking water, and/or remove LSLs when lead is detected in drinking water at the tap at levels above 15 micrograms per liter (ug/L). EPA has proposed that in addition to the existing 15 ug/L “action level”, the rule also add a 10 ug/L “trigger level” that would prompt earlier action from a utility to prevent lead levels from ever reaching the action level.

But during a May teleconference of EPA’s Science Advisory Board (SAB), some members sought to strengthen the proposed revisions to the LCR, echoing some criticisms from environmentalists and former agency officials -- although observers suggested EPA’s plan to finalize the rule by the end of the summer might make it difficult to address all of SAB’s issues.

The agency in the press release defends its planned changes, saying, “These improvements would further reduce lead in drinking water and help assure that water is less corrosive to older, lead containing plumbing materials.” -- Anthony Lacey (alacey@iwpnews.com)

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EPA Issues Final ‘Part A’ Ash Disposal Rule, Drawing Lawsuit Threats

<https://insideepa.com/daily-news/epa-issues-final-part-ash-disposal-rule-drawing-lawsuit-threats>

July 29, 2020

EPA has finalized its rule requiring coal ash disposal sites that lack protective “composite” liners to shut down but also adding a slew of new opportunities for facilities to extend their closure deadlines, drawing immediate legal threats from environmental groups who say the extensions undercut public-health protections.

The final rule, which EPA released July 29 ahead of its upcoming publication in the Federal Register, is the latest in the Trump administration’s lengthy series of revisions to Obama-era Resource Conservation & Recovery Act (RCRA) coal ash disposal standards that were first enacted in 2015.

As mandated by the 2018 U.S. Court of Appeals for the District of Columbia Circuit decision *Utility Solid Waste Activities Group (USWAG), et al., v. EPA, et al.*, the rule -- which EPA proposed on Nov. 4 as “Part A” of its “Holistic Approach to Closure” policy -- requires facilities that either lack any liner or are lined with clay rather than more-protective composite material to begin closure by April 11 rather than continuing to operate until they are shown to leak.

The April 11 closure date represents a delay from the original proposal, which targeted Aug. 31 as the deadline, and from the 2015 rule that required closure to begin by Oct. 31.

“EPA determined this new date after a careful analysis of the considerable amount of planning and construction timeline data submitted during the public comment period,” the rule says.

But the rule also allows operators to seek extensions of their closure deadlines that range from three months to eight years -- extensions that environmentalists are already arguing would allow a facility to continue operating for as long as 18 additional years if it uses all possible options.

“The rollback will add exemptions and loopholes that allow utilities to postpone closure of coal ash ponds until as late as 2038. For each coal ash pit that receives such an extension, this would allow utilities to dump an average of one million tons of additional toxic ash in a leaking, unstable or dangerously-sited pit,” reads a July 29 release from the environmental law firm Earthjustice, which also says the group “intends to file a lawsuit.”

However, EPA uses its response to comments in the rulemaking to counter those claims, which it says “misunderstood” the nature of the extension. The agency says extending the deadline for closure to conclude does not give facilities more time to actively dispose of waste ash, also termed coal combustion residuals (CCR).

“Several commenters misunderstood EPA’s proposal and commented that this provision significantly delays closure by allowing facilities to operate their CCR surface impoundments until 2028. The proposed regulation does not authorize continued operation until 2023 or 2028; rather it requires the completion of closure by those dates. These represent substantially more expedited time frames to complete closure of the unit,” it says.

The rule continues, “in order to meet those timeframes facilities will need to stop receiving waste into the unit much sooner than those dates. In order to meet these timeframes, EPA expects that many facilities closing pursuant to this provision will need to cease receiving CCR and non-CCR wastestreams sooner than they would” without the extensions, which means “the overall risk will be lower.”

Yet the rule’s implementation is likely to be complicated by EPA’s still-pending “Part B” proposal that would soften the requirement for unlined sites to shut down. Under that rule, facilities without composite liners could keep operating if they can demonstrate there is “no significant probability” of a leak that would contaminate groundwater.

Ash Litigation

Any suit brought by Earthjustice and other Trump administration critics such as environmental groups or Democratic attorneys general is likely to focus on claims raised in public comments that extending the closure deadlines for ash sites undermines the D.C. Circuit’s decision in USWAG. The judges in that case held that waiting even a few months to address a leak would violate RCRA’s prohibition on any “reasonable probability” of harm to human health or the environment.

Moreover, environmentalists are already suing over EPA’s decision not to hold in-person hearings on the Part A proposal -- a decision that predates the coronavirus pandemic -- and its refusal to extend the 60-day public comment period. If that suit is successful the agency would have to revisit its rulemaking process regardless of any decision on the rule’s merits.

Meanwhile, EPA is also poised to reopen comments on its proposal to set up a nationwide permit program for enforcing the RCRA ash standards. The agency on July 24 signed a Register notice that will reopen the comment docket for seven days after it closed on July 19, though the notice does not specify why EPA is taking that step. -- David LaRoss (dlaross@iwpnews.com)

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Suit Regarding Failure to Disclose Information about New Chemicals Could Be Resolved without a Trial

<https://www.natlawreview.com/article/suit-regarding-failure-to-disclose-information-about-new-chemicals-could-be-resolved>

Thursday, July 30, 2020

As reported in our March 23, 2020, memorandum, on March 18, 2020, a coalition of non-governmental organizations (NGO) filed suit in the U.S. District Court for the District of Columbia against the U.S. Environmental Protection Agency (EPA), claiming that EPA fails to disclose information about new chemical substances under the Toxic Substances Control Act (TSCA). *Environmental Defense Fund v. Wheeler*, No. 1:20-cv-762. On July 27, 2020, the parties submitted a joint case management statement. According to the statement, the parties agree that the case can be resolved by motions for summary judgment and that there is no need for a trial. The parties state that they disagree about whether administrative records exist and the availability and scope of discovery, however. Resolving these questions will implicate the timing for any discovery, the appropriate deadline for final amended pleadings, and the appropriate schedule for summary judgment briefing. The parties note that they are currently discussing options to resolve as many of these questions as possible and that they believe successfully resolving them could reduce the number and complexity of procedural issues before the court. In particular, according to the statement, the parties are discussing options to narrow the scope of factual and legal issues presented, which may minimize the potential for future disputes over the availability and scope of discovery. The parties propose to submit an updated case management statement no later than August 31, 2020.

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EPA rule extends life of toxic coal ash ponds

<https://thehill.com/policy/energy-environment/509792-epa-rule-extends-life-of-toxic-coal-ash-ponds>

BY REBECCA BEITSCH - 07/30/20 12:40 PM EDT

The Trump administration is extending the life of giant pits of toxic coal sludge, a move critics say further risks contamination of nearby water sources.

The Environmental Protection Agency late Wednesday announced it had finalized a new regulation for the more than 400 coal ash pits across the nation, where coal residue is mixed with liquid and stored in open air, often unlined ponds.

“Today’s action makes changes to the closure regulations for coal ash storage that enhance protections for public health while giving electric utilities enough time to retrofit or replace unlined impoundment ponds,” EPA Administrator Andrew Wheeler said in a release.

“The public will also be better informed as EPA makes facility groundwater monitoring data more accessible and understandable.”

But critics say the new rule is full of loopholes that will actually extend the life of coal ash ponds for years, giving facilities extra time to dump the arsenic-laden waste if they can’t find anywhere else to put it or have plans to retire one of their coal-burner boilers.

With those extensions, coal ash ponds that are supposed to stop receiving waste by 2021 can keep receiving sludge for two to seven more years. Including the additional time for closing ponds, that allows some pits to stay open as late as 2038.

“EPA is disingenuous. EPA is clearly fulfilling the demands of industry. This is coal lobbyist rule, this is Andrew Wheeler’s rule, and we wouldn’t expect anything different,” Earthjustice attorney Lisa Evans told The Hill, referencing Wheeler’s career as a lobbyist.

“This rule allows tens of millions of tons of additional toxic waste to be placed in impoundments we know are leaking.”

The EPA has been under long standing pressure to better regulate coal ash ponds because of the extreme risks associated with them.

An Earthjustice study review of monitoring data from coal ash ponds found 91 percent were leaking toxins in excess of what EPA allows, contaminating groundwater and drinking wells in nearby communities.

And when they aren’t leaching into groundwater, the contaminants risk spilling over the sides of the pond any time there is a heavy rain.

Dan Costa, former director of EPA’s Air, Climate, and Energy Research Program at the Office of Research and Development, said a flurry of early season tropical storms is a sign of what lies ahead.

“There’s already another tropical storm approaching the Carolinas,” he said. “The problem with these holding facilities is that they’re large, they’re full, and they can be breached with heavy rains.”

“They are usually in rural areas, if not in environmentally sensitive areas, sometimes near rivers, and they are usually in communities that have lower income people. And in North Carolina, they are in areas that are predominantly African American and poor because they don’t have any power to fight these things,” he said.

There have been major coal ash spills, like in 2014 when 39,000 tons of coal ash leaked into the Dan River in North Carolina or when rains sent 5.4 million cubic yards of coal ash over the town of Kingston, Tennessee in 2008.

EPA’s rule was spurred by various court decisions that urged stricter standards than those that were finalized in 2015 under the Obama administration.

The new rule requires coal ash ponds to stop receiving new waste by April 11, 2021. But facilities unable to find additional capacity for the waste could keep filling the ponds for another three years. And those retiring their boilers could keep using their largest ponds – those spanning more than 40 acres – until 2028.

Evans said given the time allowed to close ponds, some will remain open until 2038.

Costa said the potential for foot dragging under the new rule is unacceptable.

“I understand that it takes time to come up with solutions, and that it’s expensive, but when these accidents happen they’re catastrophic,” he said.

“We’re just putting these waste contaminants into a holding facility while we wait for what? To build another pond that has a liner so we can put it in that one? It’s just another accident waiting to happen.”

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EPA Sued Over PCB Pollution in Maryland Rivers Near Baltimore

<https://news.bloomberglaw.com/environment-and-energy/epa-sued-over-pcb-pollution-in-maryland-rivers-near-baltimore?context=search&index=1>

July 30, 2020, 11:36 AM

- COURT: D.D.C
- TRACK DOCKET: 20-cv-02063 (Bloomberg Law subscription)

Gunpowder Riverkeeper is suing the EPA in a federal district court in Washington for approving a cleanup plan to tackle toxic polychlorobiphenyls in two rivers near Baltimore.

The nonprofit is alleging Clean Water Act violations because the Environmental Protection Agency approved Maryland's plans to rid Gunpowder and Bird rivers of PCBs without requiring the state to clean up the largest source of these pollutants, which is sediment found at the bottom of the river.

PCBs are man-made chemicals that persist in the environment and accumulate in plant and animal tissue and can accumulate in humans through consumption of PCB-contaminated fish.

In their July 29 complaint, the group asked U.S. District Court for the District of Columbia to vacate EPA's approval, and to order the agency to reconsider its October 2016 decision.

The Clean Water Act requires a state to write plans known as total maximum daily loads, or TMDLs, that detail how a particular stream, lake, or river can be brought to meet water quality standards for a given pollutant.

In this instance, the group said the EPA approved Maryland Department of Environment's plans for the two rivers in October 2016. These plans didn't include pollution loads or caps for PCBs from bottom sediment in the Gunpowder and Bird rivers, and EPA didn't ask for an explanation for Maryland's actions, the group alleges.

The state admitted to groups that objected to the draft plans that "transport of PCBs to the river from bottom sediment via resuspension and diffusion is currently estimated to be the major source of PCBs."

CAUSE OF ACTION: Clean Water Act 33 U.S.C. § 1313(d)(2)

RELIEF: Vacate the EPA's approval of the TMDL for Gunpowder and Bird Rivers, and remand the approval for reconsideration to the agency.

RESPONSE: The EPA said it doesn't comment on pending litigation.

ATTORNEYS: Hope Madeline Babcock of Georgetown University Law Center is representing Gunpowder Riverkeeper.

The case is Gunpowder Riverkeeper v. Wheeler, D.D.C., No. 1:20-cv-02063, 7/29/20.

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Georgia, Texas Landfills May Lack Air Permits, EPA Watchdog Says

July 30, 2020, 1:20 PM

Reporter: Alexandra Yetter

- 12 landfills may be operating without Title V permits
- State agencies didn't check if landfills following rules

Twelve landfills in Georgia and Texas may be operating under state agencies without permits required under the Clean Air Act, the EPA's internal watchdog said Thursday.

Without state oversight, landfills "could operate for years without required emissions controls," allowing pollution to soar over federal regulatory levels, according to the report by the Office of Inspector General for the Environmental Protection Agency.

As waste in a municipal solid waste landfill decomposes, it emits methane, carbon dioxide, and nonmethane organic compounds, which can harm public health and the environment. Nonmethane organic compounds are mostly toxic air pollutants for which EPA hasn't yet updated standards.

Large landfills are required to report their waste data and inform state agencies whether their emissions surpass regulatory standards, so steps can be taken to control emission output.

But 12 landfills in Georgia and Texas may be running without those requirements. The state agencies responsible for overseeing them didn't properly collect data to verify whether the landfills needed a Title V permit or if they were exceeding emissions levels.

The EPA declined to comment further on the OIG report, pointing to its response in the report. In that response, the agency agreed with most of the findings and offered proposed deadlines for completing the recommendations.

Lack of EPA Verification

At four landfills, regulatory requirements were misunderstood, according to the audit. In one instance, the Texas Commission on Environmental Quality told a landfill it didn't need a Title V permit because it had one from 1975. But the standards were outdated, and OIG found the landfill changed its design without updating its permit.

The EPA didn't identify issues with how Georgia and Texas were implementing these regulatory requirements to control air pollution. The OIG said the EPA should have verified whether the states submitted required plans for approval of their regulations or annual progress reports, but the agency didn't.

Large landfills must obtain Title V permits, which are "legally enforceable documents designed to improve compliance by clarifying what facilities must do to control air pollution," according to the EPA's website. Most of these permits are issued by state or local agencies, with only a few coming from the EPA.

Overall, the watchdog recommended EPA require Georgia and Texas to identify whether the 12 landfills need to obtain Title V permits and enforce emissions controls. The EPA agreed with four of the seven recommendations.

—With assistance from Amena H. Saiyid.

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EPA grants leniency for dumping toxic coal ash

<https://www.eenews.net/greenwire/stories/1063656861/search?keyword=epa>

James Marshall and Dylan Brown, E&E News reporters

Published: Thursday, July 30, 2020

EPA yesterday gave power plant owners more leniency to dump coal ash into unlined ponds, drawing a promise of litigation from environmentalists who claim the rule lets heavy metals leach into groundwater.

Under the new rule, operators have until next April to stop adding more coal combustion residuals into storage sites that lack leak prevention or are not at least 5 feet from an aquifer.

This August was the deadline EPA suggested in its rule proposal last year. In the final version, EPA cited new data revealing more unlined and leaky impoundments than a 2015 analysis showed.

Extending compliance deadlines, the rule says, is a "cost savings" measure. The Obama administration initially gave unlined coal ash ponds until April 2019 to start closing.

"Today's action makes changes to the closure regulations for coal ash storage that enhance protections for public health while giving electric utilities enough time to retrofit or replace unlined impoundment ponds," EPA Administrator Andrew Wheeler said in a statement.

The rule also gives the public more access to information about how utilities manage coal ash.

EPA started regulating coal ash disposal in 2015 to prevent disasters like the 2008 spill at a Tennessee Valley Authority plant in Kingston, Tenn., that released millions of cubic yards of toxic waste into two rivers.

Although coal ash is officially classified as nonhazardous, EPA has previously admitted that storage ponds leach heavy metals at "levels of concern."

With power producers staring down billions of dollars in cleanup bills, the Trump administration proposed a series of amendments to add flexibility to "one-size-fits-all" regulations.

The U.S. Court of Appeals for the District of Columbia Circuit undercut those in 2018 (Greenwire, Aug. 29, 2018). In a unanimous decision, the judges found that the Obama-era standards were too lenient, tossing three provisions allowing unlined ponds to operate indefinitely as long as there was no evidence of groundwater contamination.

The new rule reclassifies clay-lined ponds as unlined impoundments to align with the court ruling.

But last March, the court gave EPA more time to set a new compliance deadline (Greenwire, March 13, 2019).

The agency now gives plant owners until April to "cease receipt" of coal ash at unlined ponds (Greenwire, Nov. 4, 2019).

But if operators prove to EPA that they need more time to develop an alternative means of disposal, the deadline falls back to 2024. And if some part of the associated power plant is shutting down, storage ponds larger than 40 acres don't need to close until 2028.

Companies with these larger coal ash ponds could get extensions bringing the completion of closure to 2038, Lisa Evans, an Earthjustice attorney, said in an interview.

"The final rule boils down to giving industry more time to operate surface impoundments, despite the court ruling," Evans said. "Their highest priority is to serve the interest of the coal electric industry."

More than 700 coal ash ponds exist across the country, according to an analysis by Earthjustice and the Environmental Integrity Project. The groups also found unsafe groundwater levels at more than 90% of coal-fired power plants that report monitoring data.

Industry argues that the extension recognizes the technical challenges of meeting the deadline. Evans said the rule puts industry's interests first and comes at the expense of clean drinking water, lakes and rivers.

"If it weren't for the Trump administration, the dumping of toxic coal ash into leaking ponds would have stopped over a year ago," she added in a statement. "We'll see the Trump administration in court."

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EPA unveils 'lead-free' rule targeting plumbing parts

<https://www.eenews.net/greenwire/stories/1063656515/search?keyword=epa>

Hannah Northey, E&E News reporter

Published: Thursday, July 30, 2020

EPA released a final rule yesterday that limits the amount of lead allowed in plumbing products and imposes stricter oversight of manufacturers or importers of such equipment.

The "lead-free" rule lowers the amount, or weighted average, of lead allowed in pipes as well as pipe and plumbing fittings and fixtures from 8% to 0.25%, a limit that aligns with the Reduction of Lead in Drinking Water Act. Solder and flux would only be allowed to contain up to 0.2% lead.

EPA is also requiring companies that make or import plumbing products to certify their products meet the new requirements within three years of the rule being published in the Federal Register. That includes manufacturers, importers, wholesalers, distributors, resellers and retailers of plumbing materials, as well as anyone who installs or repairs equipment.

"As a result, this new rule will reduce lead in drinking water and assure that states, manufacturers, inspectors and consumers have a common understanding of 'Lead Free' plumbing," EPA wrote. The rule will become effective 30 days after publication in the Federal Register.

The rule brings current regulation in line with existing law, including amendments made to the Safe Drinking Water Act in 1996, Reduction of Lead in Drinking Water Act of 2011 and Community Fire Safety Act of 2013, according to EPA.

Ronnie Levin, a former EPA staffer who now manages the water and health program at Harvard University's T.H. Chan School of Public Health, said the rule is overall good progress for consumers.

She noted it requires third-party certification — a step forward. But she also noted the rule exempts equipment like shower valves and heads that are still a drinking water source in many schools, as well as fire hydrants that may at times be used beyond temporary circumstances.

"We know that during flooding and disasters, people get water for days, weeks, months, passed from hydrants through hoses, none of which are necessarily certified lead-free," she said.

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Watchdog urges EPA to boost oversight of landfill permits

<https://www.eenews.net/greenwire/stories/1063656645/search?keyword=epa>

Ariana Figueroa, E&E News reporter

Published: Thursday, July 30, 2020

An independent watchdog has found that EPA needs to improve its oversight of how states implement air quality regulations for waste sites.

The Office of Inspector General released a report today that looked at 12 active municipal solid waste landfills in Georgia and Texas "that could be operating without the required Title V permits," which is a requirement under the Clean Air Act for major sources of air pollutants.

As the waste in a landfill breaks down, it can release methane, carbon dioxide and nonmethane organic compounds, which "can cause adverse health and environmental effects," investigators wrote.

"Without effective state implementation and EPA oversight of Clean Air Act regulations for [municipal solid waste] landfills, these landfills could operate for years without required emissions controls," investigators wrote. "As a result, MSW landfills could emit more air pollutants than allowed under a Title V permit, and state efforts to meet the EPA's air quality standards for ozone and fine particulate matter could be hindered."

James Hatfield, head of the Office of Inspector General's air directorate, notified former EPA air chief Bill Wehrum of the audit, which was expected to improve the agency's enforcement and uncover issues with the way state and local officials implement those requirements (E&E News PM, Sept. 5, 2018).

The Office of Inspector General made seven recommendations to EPA. The agency completed four recommendations, according to the report, but rejected three.

EPA disagreed with recommendations to "develop and implement a process for the periodic review of municipal solid waste landfill design capacity information," update guidance for permit requirements for waste sites to submit reports, and develop "a process to confirm that state plans approved for delegation of the 2016 municipal solid waste landfill Emission Guidelines contain all required program elements and provisions for submitting annual progress reports."

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EPA, DOJ At Odds Over Whether Biomass Proposal Undercuts ACE Rule

<https://insideepa.com/daily-news/epa-doj-odds-over-whether-biomass-proposal-undercuts-ace-rule>

July 30, 2020

EPA and the Justice Department (DOJ) are at odds over whether the agency's long-pending proposal to declare woody biomass to be carbon neutral for Clean Air Act stationary source permits would undercut the legal justification for the agency's narrow greenhouse gas standards for power plants.

The dispute is stalling completion of interagency review for the biomass plan, and the agencies' conflict might soon be brought to EPA Administrator Andrew Wheeler and Attorney General William Barr for potential resolution, sources following the rule say.

"It sounds like it's going to have to get elevated" to Wheeler and Barr "to be resolved unless someone at the White House can break the logjam" between DOJ's top environment official Jeffrey Clark and EPA air chief Anne Isdal, one source says.

Clark is said to be concerned that a rule finding biomass to be carbon neutral undercuts Trump administration arguments defending EPA's Affordable Clean Energy (ACE) power plant GHG rule, which explicitly rejects biomass as a compliance option because EPA determined the rule's GHG cuts have to be made within a facility's fence line.

The biomass plan justifies its carbon neutrality finding on forest regrowth, even though GHG emissions at the stack of biomass power plants can rival or exceed coal plants.

A second source following the rule notes that DOJ's role is to provide legal advice to rulemaking agencies, charging that it is going beyond that role in this case, where it is interfering with a policy decision that agency staff and lawyers are behind.

This source believes that if the issue is elevated to the Cabinet level, Barr would concede to Wheeler, who has stressed that the issue is an agency and Hill priority, given language in appropriations bills ordering EPA and other agencies to treat sustainably harvested biomass as carbon neutral.

Despite reports that the DOJ's concerns stalling interagency review appeared to have been resolved last week, it appears that the proposed rule will not be released "any day," as one Hill source previously speculated. The plan has been under White House interagency review since Feb. 24.

"The line about it [being] mostly resolved" is "not my understanding," the first source says. They are "dug in at mid-level administration."

This source adds that Clark is objecting to issuing the proposal -- widely expected to declare sustainably harvested woody biomass to be carbon neutral in Clean Air Act prevention of significant deterioration permits -- because it "makes the arguments they've laid out in the ACE rule more flimsy," the source says.

Isdal apparently has not been able to convince him otherwise, despite broad agency support and alignment -- between the legal and policy offices -- that EPA can advance the biomass rule without undercutting ACE, the second source says.

DOJ so far has prevented the rule from going forward in order to protect ACE. Legal challenges to that rule are being briefed in *American Lung Association, et al. v. EPA, et al.*, before the U.S. Court of Appeals for the District of Columbia Circuit, with petitioner replies due July 30.

DOJ, writing on EPA's behalf in a June 16 brief, offered first-time detailed legal arguments in defense of the power plant rule, including that, "Biomass co-firing does not reduce [carbon dioxide] emissions at the source -- it increases them."

The Biogenic CO2 Coalition sued EPA over the technology's exclusion from ACE, writing in an April 17 opening brief that the agency's "decision to disqualify biomass cannot be squared with" the Clean Air Act,

“which gives states and facilities compliance flexibility to use clean fuels.” The filing added that if the rule stands, it “would have the improper back-door effect of regulating biogenic emissions as dangerous pollutants without a predicate science-based determination or regulatory basis.”

No ‘Good Answer’

The fate of the proposed biomass rule “has to get escalated because no one has a really good answer” for how to resolve the dispute, the first source says.

But the second source stresses that DOJ does not craft policy and says it has no business picking a fight over this issue, particularly after the biomass sector has urged EPA for 10 years to issue such a policy.

EPA remains under tremendous pressure from biomass groups, which are arguing that “this can’t be the end” of the effort, the first source says.

Industry is also raising political concerns. Because big bioenergy states such as North Carolina and Georgia are competitive in the Nov. 3 presidential election, the effects of continued delay “are a little squishy” politically, the first source says. “They just keep punting for more and more months . . . and for all of these biomass companies, their perspective is they need a decision” and “almost” want one either way, rather than continuing to wait.

The second source stresses that “now is not the time” for the administration to take steps that would harm rural communities.

Neither source has information on the timeline for potential escalation to Wheeler and Barr.

A third source following the rule says that in addition to DOJ’s concern that the proposal contradicts the agency’s position in front of the D.C. Circuit, others are warning that the biomass industry may seek to use the proposed rule -- which is limited to woody biomass in major stationary source air permits -- as a way to open the door to considering all types of biomass as carbon neutral no matter the regulatory program.

This source notes that in the ACE filings, the industry has pressed for woody biomass and agricultural crop residues to be considered carbon neutral, but it has not explicitly said that is where its carbon neutrality effort ends.

“So, their argument could extend to cutting down old, full-grown trees and burning them,” the source says, warning that if EPA issues the proposal, it is allowing “the fox in the hen house, and the fox wants all the chickens. It doesn’t want to leave any behind. And DOJ is saying, ‘That doesn’t work.’”

Neither EPA nor DOJ responded to requests for comment. -- Dawn Reeves (dreeves@iwpnews.com)

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EPA Won’t Extend Relaxed Enforcement, Despite Surging Virus Data

<https://news.bloomberglaw.com/environment-and-energy/epa-wont-extend-relaxed-enforcement-despite-surging-virus-data?context=search&index=0>

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Reporter: Stephen Lee

- EPA says it will consider case-by-case discretion

- Lawyers say decision makes sense

The EPA isn't considering extending its temporary enforcement policy beyond its Aug. 31 expiration date, despite surging coronavirus case rates, an agency spokesman said.

The policy, issued on March 26, is meant to give relief to regulated entities unable to comply with certain reporting obligations because of the Covid-19 pandemic.

However, the Environmental Protection Agency "retains the authority to exercise enforcement discretion on a case-by-case basis regarding any noncompliance, including noncompliance caused by the Covid-19 public health emergency," according to the spokesman.

Coronavirus cases and deaths have risen sharply in the U.S. in recent weeks, and are significantly higher than when the EPA put the policy in place. More than 4 million Americans now have the virus, and some 150,000 have died, according to the Centers for Disease Control and Prevention.

Not 'Worth the Squeeze'

Patrick Traylor, a former EPA deputy assistant administrator for enforcement and compliance assurance, said the agency's decision could have been driven by the fact that many states have loosened their stay-at-home orders while the public health crisis remains urgent.

The EPA may also have information that the policy hasn't been widely used by the regulated community, leading it to conclude that "the juice of an extension isn't worth the squeeze," said Traylor, now a partner with Vinson & Elkins LLP.

Further, to extend the policy, the EPA "would have to consider any potential negative effects of an extension on the ongoing litigation over the policy," Traylor said.

The EPA also "took a lot of heat" from critics in Congress, the environmental community, and the media that interpreted the policy as offering broad waivers that go beyond routine monitoring, reporting, and record-keeping, said Matthew Morrison, a former associate director of the EPA's air enforcement division who served during the terms of Presidents George W. Bush and Barack Obama.

'Basis to Live On'?

The policy could "have a basis to live on" if there are no documented cases of regulated entities abusing it, and if the types of problems that made compliance difficult in the first place still exist, said Andrew Stewart, a former division director in the EPA's Office of Civil Enforcement who also served during Bush's and Obama's terms.

Many regions are still enforcing travel restrictions and mandatory self-quarantine measures for people who may have been exposed, said Stewart, now an environmental attorney with Sidley Austin LLP.

"So many complex systems rely on contractors, and there are different sub-specialties to deploy to the field, to check on things that are more remote," Stewart said.

Morrison, now an environmental law attorney at Pillsbury Winthrop Shaw Pittman LLP, said he doesn't anticipate the EPA granting many exemptions as it makes individual, case-by-case determinations, except in extraordinary circumstances.

"That may be fair, given that companies now have had several months to adjust and adapt to running their plants under the pandemic," Morrison said. "And since compliance with emission and pollutant standards was never relaxed, then companies were ostensibly doing some monitoring and at least internal reporting to ensure they remained compliant with standards."

But the EPA will continue to keep a close eye on Covid-19 case rates, Traylor anticipated.

“If the public health situation seriously deteriorates such that widespread stay-home orders are again imposed, the EPA would at least have to consider whether an extension of the policy would be warranted,” he said.

New Guidelines

The relaxed enforcement policy doesn’t have to extend beyond Aug. 31 because new federal guidelines have been issued to support the public health response and economic recovery efforts, Susan Parker Bodine, the EPA’s assistant administrator for enforcement and compliance assistance, wrote in a June 29 memo.

“As state and local restrictions are relaxed or lifted, so too may the restrictions that potentially impede regulatory compliance, reducing the circumstances in which the temporary policy may apply,” Bodine wrote.

EPA chief Andrew Wheeler has repeatedly said the enforcement policy doesn’t permit new emissions.

When the policy was rolled out, it was because “we did not want to have to require people to go into a facility and fill out a form to submit to EPA,” Wheeler said Wednesday during a Heritage Foundation webinar.

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Biofuels, Oil Industries Grapple With Delays For Major EPA RFS Decisions

<https://insideepa.com/weekly-focus/biofuels-oil-industries-grapple-delays-major-epa-rfs-decisions>

July 30, 2020

Biofuels and oil sector groups are grappling with the implications of potentially long delays for major EPA decisions on the future of the renewable fuel standard (RFS), with the Trump administration increasingly likely to postpone action until after the November elections on issues including RFS waivers and 2021 production goals.

Until recently, EPA was expected to release in July its proposed 2021 RFS biofuel blending targets with an eye to meeting a statutory mandate of finalizing the rule by Nov. 30. But the proposal has been under White House Office of Management & Budget (OMB) review since May 13 and is said to be “indefinitely” delayed, possibly until after the elections because the RFS is politically contentious.

Such a delay would be a “huge problem” for the biofuels sector, says one leading biofuels advocate.

And oil sector groups are warning that a long delay would be disruptive to their industry, but also favor delay over any proposal that would force more biofuels into the market than refiners believe they can handle. Several oil groups have long called for major reform or outright repeal of the RFS, saying it hurts their sector.

EPA is also yet to act on dozens of petitions from small refiners seeking waivers from their RFS fuel blending obligations, including 28 petitions for compliance years 2019 and 2020, and 58 “gap filings” for long-passed compliance years. The gap filings aim to circumvent a January ruling by the U.S. Court of Appeals for the 10th Circuit that, if implemented nationally, could effectively bar almost all small refiners from winning 2019 and 2020 waivers.

By law, the agency must respond to waiver requests within 90 days but it is now overdue on many of the pending requests and is now facing litigation seeking to force it to act.

For example, refiner United Refining Company filed suit against EPA July 20 in the U.S. District Court for the District of Columbia to force a decision on its waiver petition.

Small refiners say the waivers -- granted to those companies that can prove “disproportionate” economic harm from complying with the RFS -- are necessary to alleviate economic hardship caused by the RFS mandates.

But biofuels groups say the refiners’ plight is caused by other factors, and that the Trump administration has handed out waivers far in excess of the Obama EPA in order to help the oil sector, while “destroying demand” for biofuels.

Further complicating the issue, major integrated oil companies oppose the small refiner waivers, which they say would burden large refiners with increased RFS compliance obligations.

EPA also has received petitions for broader economic hardship waivers, either partial or total, from several states, and also a group of small refiners, on which it appears to have not yet acted.

Issuance of waiver decisions has become a central issue in the Senate, where the nominations of two federal officials are being held up because of GOP infighting over the RFS. Sen. Joni Ernst (R-IA) is blocking the nomination of Doug Benevento to be EPA deputy administrator, seeking reassurances that EPA will not issue dozens of small refiner waivers and undermine biofuels demand.

Ernst in a July 28 letter to EPA Administrator Andrew Wheeler is also pushing EPA to begin a rulemaking to ease the sale of 15 percent ethanol fuel (E15) by removing regulatory barriers related to infrastructure and labeling, after EPA approved E15 for year-round sale in 2019. Senators in October reached agreement with the White House to remove such barriers. “Will you commit to begin the rulemaking by October 4, 2020, one year after the RFS agreement was announced, to move forward with expediting the sale of E15 through existing infrastructure?” Ernst asks.

Sen. Ted Cruz (R-TX) also has a hold on Benevento’s nomination, but with a pro-oil sector agenda. Cruz is seeking EPA measures to contain the costs of RFS compliance credits, known as renewable identification numbers (RINs).

In addition, sources say that Senate Environment and Public Works Committee (EPW) Chairman John Barrasso (R-WY) is “slow walking” the nomination of Mark Menezes to be deputy U.S. Energy Secretary.

Barrasso is trying to pressure the Department of Energy (DOE) to issue its “score” of economic hardship for small refiners seeking waivers, which would then allow EPA to act on the exemptions, sources say.

EPA did not respond to a request for comment by press time.

Conflicting Demands

The conflicting demands of GOP senators underscore the substantial risks for President Donald Trump’s reelection campaign in proceeding with major decisions on the RFS that will inevitably anger one part of his political base.

Previous attempts by the Trump White House to broker deals between the warring oil and biofuels factions have not abated the conflict, which has been intensified by a severe economic downturn as a result of the COVID-19 pandemic that has hit both oil sector industries and biofuels producers hard, sources say.

EPA’s draft 2021 RFS is expected to increase blending levels somewhat for cellulosic fuels over 2020 levels, but hold the volume for conventional corn-based ethanol steady at the 15 billion gallon level “implied” by the Clean Air Act. There is no explicit volume for corn ethanol, which meets the vast majority of the overall RFS

mandate. Cellulosic biofuels must obtain higher greenhouse gas reductions under the RFS relative to unblended gasoline than corn ethanol.

The proposal will not, however, address major outstanding uncertainties, such as the potential impact of small refiner waivers, or the ultimate projected demand for transportation fuels in 2021. If EPA delays the proposal until after the election, a final rule might not issue until as late as April 2021 because of the need to take comment on the draft, scrambling the compliance and business plans of many players in the biofuels and oil sectors.

A severely delayed volumes proposal “would be a huge problem for us,” Renewable Fuels Association (RFA) President and CEO Geoff Cooper told Inside EPA July 29. Not having biofuel blending volumes in place creates massive market uncertainty and prevents biofuel producers and farmers from planning for the coming year, Cooper said. Also, if EPA waits until after the election to issue the volumes proposal or act on waiver requests, this “eliminates the ability of voters to hold the administration accountable” for its biofuel policies, Cooper said.

When the Obama administration missed its deadlines to issue RFS rules, one result was that EPA granted refiners compliance flexibility and did not hold them to the same compliance requirements, he added.

Although RFA strongly opposes small refiner waivers, Cooper also said that EPA should quickly decide on the pending waiver requests, by rejecting them and implementing the ruling of the 10th Circuit. The court struck down the waivers of three small refiners because EPA “extended them” for facilities that lacked waivers in prior years.

Cooper notes that EPA missing its Nov. 30 deadline to issue a final 2021 RFS brings considerable litigation risk, and the American Petroleum Institute (API), among others, previously sued the Obama administration for missing that deadline.

A second biofuels industry source says, “There’s no promise that the rule will come out even after the election. It’s somewhat worse than the delays of the 2013 and 2014 rules under the Obama administration, where at least there were proposed rules that gave refiners and biofuel producers notice.”

‘Bad For Planning Purposes’

Oil sector groups, meanwhile, acknowledge the potential for market disruption, but are also downplaying the likely consequences of a delayed 2021 RFS proposal. A source with API says, “It’s bad for planning purposes / business certainty since the rule affects how they comply on January 1, but a late rule is not unprecedented and there’s no reason to think biofuels won’t continue to be blended or that it will be a serious problem for program compliance. We’d rather they got the right numbers late than the wrong numbers right now.”

API continues to stress its opposition to the small refiner waivers. “We agree with the logic of the 10th Circuit . . . and think that logic should be applied nationally,” the source says. With regard to governors’ petitions for more sweeping RFS waivers, “safe to say that it’s doubtful they are being considered very seriously,” the source says. “Additionally, small refiners are submitting other relief petitions on sulfur and benzene rules that similarly create an unlevel playing field among the refining industry.”

The second biofuels industry source agrees with this view of the governors’ waiver petitions, noting prior EPA practice in not granting such requests. “If EPA followed the same procedure it did for the 2017 and 2018 general waiver petitions, they would ask the governors for additional data regarding the hardships that specific refiners are facing. The current letters seem no different than the previous ones.”

A source with the American Fuel And Petrochemical Manufacturers (AFPM), which represents much of the refining sector including many small refiners, says, “we’ve heard that the 2020 [volumes rule] is being delayed until later this year, but we don’t think there is a precise date or a plan for release as of yet.”

“Regulatory certainty is always important to refiners, but at the same time it’s better that the Agency get this rulemaking right rather than simply getting it done quickly. With market upheaval from COVID and uncertainty around [small refiner waivers], it is even more important that annual volumes be set at achievable levels.”

Further, how EPA handles small refiner waiver applications “and the gap year waivers that have been filed could have a major impact on whether deserving small refineries have access to RFS relief lifelines in the years ahead. We’ve seen one small refinery shut down this year already, citing RFS costs as a contributing factor, so it’s not a stretch to say the impact of these decisions will be significant.” -- Stuart Parker

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Hearing Tees Up House Democrats’ SDWA, PFAS Post-Election Priorities

<https://insideepa.com/daily-news/hearing-tees-house-democrats-sdwa-pfas-post-election-priorities>

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House Democrats used a recent hearing to tee up early signals of the post-election policy priorities they will push on overhauling the Safe Drinking Water Act’s (SDWA) standard-setting process and seeking interim drinking water regulation of per- and polyfluoroalkyl substances (PFAS), though GOP lawmakers are urging restraint.

At a July 28 hearing by the House Energy & Commerce Committee’s environment panel titled “There’s Something in the Water: Reforming Our Nation’s Drinking Water Standards,” Democrats argued that the standard-setting process under SDWA is broken, and called for revisions. They say 1996 amendments to the law have failed to prompt any new drinking water standards -- except those explicitly required by Congress.

But Republicans called for a slow approach to any overhaul, noting any significant changes to core environmental laws would require broad bipartisan support, and touted other drinking water rules and policies EPA has set.

Just a few months before the November elections, Democrats appear to be teeing up SDWA’s standard-setting process for an overhaul -- potentially signaling one of their environmental priorities for the next Congress, in hopes that the Democrats will control both Houses and the White House to advance their agenda.

House Energy & Commerce Committee Chairman Frank Pallone (D-NJ) in his opening statement argued there are three fundamental problems with SDWA -- that its current standard-setting process is not working, that it “is not designed to produce health-based standards,” and that it gives EPA too much discretion.

He noted the bipartisan effort four years ago to craft revisions to the Toxic Substances Control Act “from a regulatory system based on cost-benefit analysis to one based on health protection,” and suggested repeating that effort for SDWA. “We must strengthen [SDWA] to ensure that everyone has access to drinking water that is safe and healthy.”

But Republicans on the committee argued that Democrats have not approached them about a bipartisan approach on this and warned of opposition to changes to the cost-benefit analysis used in SDWA.

Rep. David McKinley (R-WV) said while Rep. Paul Tonko (D-NY) -- the environment subcommittee chair -- has been among the most bipartisan members of Congress, as of that morning, none of the Republican members had been approached by Democrats to work on this together, raising his suspicions that this will be another partisan bill that goes nowhere, getting stuck in the Senate.

"It doesn't have to be this way," McKinley said. But he added that Democratic staff have implied that over the next six months there is no need for bipartisan support because the Democrats may then control the White House and two chambers of Congress. "So they're coming across to us in a way that says 'we're just going to wait it out.'" He suggested instead working together on a bill that could be passed into law.

Further, at the suggestions that changes to the law's cost-benefit analysis will likely be on the table, McKinley said that the matter will be a "non-starter."

Tonko dismissed the idea that Democrats were delaying legislative reforms on this. "I can tell you the issue is of importance that we want to get something done," he replied. He noted the bipartisan track record of the committee and said "let's take the information we garner here" and go to work to ensure that lawmakers move forward with protections that the public deserves. "So look, I stand ready to work with both sides to get something done."

PFAS Concerns

Democrats also raised concerns over PFAS, for which they said EPA has made limited progress in setting up a drinking water standard. And they suggested EPA could create an interim drinking water standard in the meantime -- something that may hint at what they would press the agency to do, should Joe Biden win the presidency in November.

Tonko in his opening statement said many would argue the standard-setting process set by the 1996 amendments to the law does not work. "Since 1996, all regulatory determinations have been negative, except for perchlorate, which EPA has now reversed," he said. "This means there has not been a single new standard set in 24 years that wasn't explicitly required by Congress."

He noted that perchlorate -- an ingredient in rocket fuel and munitions that has been linked to interferences with thyroid function -- was found in the water supplies for millions of Americans and "is a perfect example of the regulatory regime's problems." EPA in June announced that federal regulation of perchlorate in drinking water is unnecessary because water systems have sufficiently lowered the chemical's occurrence in the water supply. The agency's decision reverses the Obama administration's 2011 determination that a SDWA rule is warranted.

"Despite knowing [perchlorate's] dangers, we are still a long way from a finalized national standard," Tonko said. "And this could very much be the path for PFAS."

Democrats made some suggestions as to how they may try to rework SDWA, with Tonko noting that national standards should be protective of all Americans, "including the most vulnerable to risks -- pregnant women, infants, children, and other susceptible populations."

Further, Democrats suggested rethinking the law's cost-benefit analysis used in the standard-setting process. Pallone said he believes it would surprise many people that the landmark law for safe drinking water is based on cost-benefits, arguing that in his opinion the law double-counts cost considerations.

First, he said, the statute limits "what is feasible," therefore factoring in some amount of cost consideration, and then the law layers on top of that, a cost-benefit analysis, which he said further weakens protections.

He asked Mae Wu, senior director of health and food in the Natural Resources Defense Council's Healthy People and Thriving Communities Program, whether drinking water standards should be based on health risks, and whether Congress should eliminate the cost-benefit analysis and "still keep the feasible standard."

Wu said she agrees that the feasibility aspect of the standard-setting process does require cost to be considered, so the additional cost-benefit analysis is an extra, added layer. Plus, she added, benefits are often undercounted. She said "just focusing on feasibility, which already accounts for costs, is enough."

Democrats queried Wu about ways in which Congress could strengthen SDWA. She called it “quite broken” and suggested fixes, including eliminating the “extra layer” of cost-benefit analysis, and ensuring the law protects the most vulnerable populations. She noted that while the statute says EPA should consider vulnerable populations, it should be more “explicit” in saying EPA must protect those populations. “Science is important, but we have to make sure we don’t have outsized industrial interference in developing that science,” she said.

Rep. John Shimkus (R-IL), though, argued “to keep cost out of this debate is ridiculous.” Earlier in the hearing, he said that the 1996 amendments were passed to “stop the chaos,” with Congress declaring that quantity was not the true measure of whether EPA was doing its job, but rather quality was. He said while it is always useful to review a law, and there may be a few improvements to be made, he said, “before we get carried away in the rhetoric, let’s consider the lessons of history so we don’t go back and make the same mistakes twice.”

‘Waking The Ghosts’

Rep. Greg Walden (R-OR), ranking member on the full energy panel, in his opening statement said that Republicans are “concerned about waking the ghosts of the 1986 amendments by placing EPA on an accelerated treadmill of regulatory decision-making quotas and increasing the rolling three-year cycle for regulatory determinations.”

Walden argued for “objective science” to guide decisions, opposed any effort to remove the existing statutory criteria focused on “meaningful health risk reduction” -- which he said would mean water systems having to reduce contaminants that may not be a significant threat to public health -- and opposed removing the cost-benefit analysis. An elimination of that analysis could leave small water systems without any affordable options for compliance, he said.

Democrats also suggested EPA could set interim drinking water standards for PFAS -- something the agency did not suggest when it announced in February it proposed to develop drinking water limits for two of the most studied PFAS.

Pallone argued the Trump EPA has abused its discretion under SDWA, including when it comes to PFAS. The agency “has slow walked efforts to set a standard for PFAS, instead of using its authority to set interim standards.”

To that end, Rep. Lisa Blunt Rochester (D-DE) asked Wu whether EPA should use its current authority to set an interim drinking water standard for PFAS. Wu replied that it should, given the urgent public health threat that the chemicals present.

More than 600 communities in at least 43 states are dealing with PFAS exposure, according to a recent Senate letter to federal health agencies. PFAS is a class of emerging contaminants that has sparked communities’ concerns due to their appearance in drinking water supplies around the country and links to adverse effects. Communities and lawmakers have particularly criticized the lack of urgent response to the chemicals from EPA. -- Suzanne Yohannan (syohannan@iwpnews.com)

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